

61-1-1. Fraud unlawful.

It is unlawful for any person, in connection with the offer, sale, or purchase of any security, directly or indirectly to:

- (1) employ any device, scheme, or artifice to defraud;
- (2) make any untrue statement of a material fact or to omit to state a material fact necessary in order to make the statements made, in the light of the circumstances under which they are made, not misleading; or
- (3) engage in any act, practice, or course of business which operates or would operate as a fraud or deceit upon any person.

Amended by Chapter 284, 1983 General Session

61-1-2. Investment adviser -- Unlawful acts.

(1) It is unlawful for any person who receives any consideration from another person primarily for advising the other person as to the value of securities or their purchase or sale, whether through the issuance of analyses or reports or otherwise to:

- (a) employ any device, scheme, or artifice to defraud the other person;
- (b) engage in any act, practice, or course of business which operates or would operate as a fraud or deceit upon the other person; or
- (c) divide or otherwise split any consideration with any person not licensed under this chapter as an investment adviser or investment adviser representative.

(2) (a) Except as may be permitted by rule of the division, it is unlawful for any investment adviser to enter into, extend, or renew any investment advisory contract unless it provides in writing that:

(i) the investment adviser shall not be compensated on the basis of a share of capital gains upon or capital appreciation of the funds or any portion of the funds of the client;

(ii) no assignment of the contract may be made by the investment adviser without the consent of the other party to the contract; and

(iii) the investment adviser, if a partnership, shall notify the other party to the contract of any change in the membership of the partnership within a reasonable time after the change.

(b) Subsection 61-1-2(2)(a)(i) does not prohibit an investment advisory contract which provides for compensation based upon the total value of a fund averaged over a definite period, or as of definite dates or taken as of a definite date.

(c) "Assignment," as used in Subsection 61-1-2(2)(a)(ii), includes any direct or indirect transfer or hypothecation of an investment advisory contract by the assignor or of a controlling block of the assignor's outstanding voting securities by a security holder of the assignor.

(d) If the investment adviser is a partnership, no assignment of an investment advisory contract is considered to result from the death or withdrawal of a minority of the members of the investment adviser having only a minority interest in the business of the investment adviser, or from the admission to the investment adviser of one or more members who, after admission, will be only a minority of the members and will have only a minority interest in the business.

(3) It is unlawful for any investment adviser to take or have custody of any

securities or funds of any client if:

- (a) the division by rule prohibits custody; or
- (b) in the absence of a rule, the investment adviser fails to notify the division that he has or may have custody.

(4) The division may by rule adopt exemptions from Subsections 61-1-2(2)(a)(i), (ii), and (iii) where such exemptions are consistent with the public interest and within the purposes fairly intended by the policy and provisions of this chapter.

Amended by Chapter 356, 2009 General Session

61-1-3. Licensing of broker-dealers, agents, investment advisers, and investment adviser representatives.

(1) It is unlawful for a person to transact business in this state as a broker-dealer or agent unless the person is licensed under this chapter.

(2) (a) It is unlawful for a broker-dealer or issuer to employ or engage an agent unless the agent is licensed. The license of an agent is not effective during any period when the agent is not associated with:

- (i) a particular broker-dealer licensed under this chapter; or
- (ii) a particular issuer.

(b) When an agent begins or terminates an association with a broker-dealer or issuer, or begins or terminates activities as an agent, the agent and the broker-dealer or issuer shall promptly notify the division.

(c) An agent who terminates an association with a broker-dealer or issuer is considered to be unlicensed until the day on which the division:

- (i) approves the agent's association with a different broker-dealer or issuer; and
- (ii) notifies the agent of the division's approval of the association.

(d) (i) It is unlawful for a broker-dealer or an issuer engaged, directly or indirectly, in offering, offering to purchase, purchasing, or selling a security in this state, to employ or associate with an individual to engage in an activity related to a securities transaction in this state if:

- (A) (I) the license of the individual is suspended or revoked; or
- (II) the individual is barred from employment or association with a broker-dealer, an issuer, or a state or federal covered investment adviser; and

(B) the suspension, revocation, or bar described in Subsection (2)(d)(i)(A) is by an order:

- (I) under this chapter;
- (II) of the Securities and Exchange Commission;
- (III) of a self-regulatory organization; or
- (IV) of a securities administrator of a state other than Utah.

(ii) A broker-dealer or issuer does not violate this Subsection (2)(d) if the broker-dealer or issuer did not know and in the exercise of reasonable care could not have known, of the suspension, revocation, or bar.

(iii) An order under this chapter may modify or waive, in whole or in part, the application of Subsection (2)(d)(i) to a broker-dealer or issuer.

(3) It is unlawful for a person to transact business in this state as an investment adviser or as an investment adviser representative unless:

- (a) the person is licensed under this chapter;
- (b) the person's only clients in this state are:
 - (i) one or more of the following whether acting for itself or as a trustee with investment control:
 - (A) an investment company as defined in the Investment Company Act of 1940;
 - (B) another investment adviser;
 - (C) a federal covered adviser;
 - (D) a broker-dealer;
 - (E) a depository institution;
 - (F) a trust company;
 - (G) an insurance company;
 - (H) an employee benefit plan with assets of not less than \$1,000,000; or
 - (I) a governmental agency or instrumentality; or
 - (ii) other institutional investors as are designated by rule or order of the director;

or

- (c) the person:
 - (i) is licensed in another state as an investment adviser or an investment adviser representative;
 - (ii) has no place of business in this state; and
 - (iii) during the preceding 12-month period has had not more than five clients, other than those specified in Subsection (3)(b), who are residents of this state.

- (4) (a) It is unlawful for:
 - (i) a person required to be licensed as an investment adviser under this chapter to employ an investment adviser representative unless the investment adviser representative is licensed under this chapter, except that the license of an investment adviser representative is not effective during any period when the person is not employed by an investment adviser licensed under this chapter;
 - (ii) a federal covered adviser to employ, supervise, or associate with an investment adviser representative having a place of business located in this state, unless the investment adviser representative is:
 - (A) licensed under this chapter; or
 - (B) exempt from licensing; or
 - (iii) an investment adviser, directly or indirectly, to employ or associate with an individual to engage in an activity related to providing investment advice in this state if:
 - (A) (I) the license of the individual is suspended or revoked; or
 - (II) the individual is barred from employment or association with a state or federal covered investment adviser, broker-dealer, or issuer; and
 - (B) the suspension, revocation, or bar is by an order:
 - (I) under this chapter;
 - (II) of the Securities and Exchange Commission;
 - (III) a self-regulatory organization; or
 - (IV) a securities administrator of a state other than Utah.
- (b) (i) An investment adviser does not violate Subsection (4)(a)(iii) if the investment adviser did not know, and in the exercise of reasonable care could not have known, of the suspension, revocation, or bar.
- (ii) An order under this chapter may waive, in whole or in part, the application of

Subsection (4)(a)(iii) to an investment adviser.

(c) When an investment adviser representative required to be licensed under this chapter begins or terminates employment with an investment adviser, the investment adviser shall promptly notify the division.

(d) An investment adviser representative who terminates association with an investment adviser is considered unlicensed until the day on which the division:

(i) approves the investment adviser representative's association with a different investment adviser; and

(ii) notifies the investment adviser representative of the division's approval of the association.

(5) Except with respect to an investment adviser whose only clients are those described under Subsections (3)(b) or (3)(c)(iii), it is unlawful for a federal covered adviser to conduct advisory business in this state unless the person complies with Section 61-1-4.

Amended by Chapter 317, 2011 General Session

61-1-4. Licensing and notice filing procedure.

(1) (a) A broker-dealer, agent, investment adviser, or investment adviser representative shall obtain an initial or renewal license by filing with the division or its designee an application together with a consent to service of process under Section 61-1-26.

(b) (i) The application shall contain the applicant's Social Security number and whatever information the division by rule requires concerning such matters as:

(A) the applicant's form and place of organization;

(B) the applicant's proposed method of doing business;

(C) (I) the qualifications and business history of the applicant; and

(II) in the case of a broker-dealer or investment adviser, the qualifications and business history of any partner, officer, or director, any person occupying a similar status or performing similar functions, or any person directly or indirectly controlling the broker-dealer or investment adviser;

(D) whether the applicant has been subject to:

(I) an injunction, administrative order, or misdemeanor conviction involving a security or any aspect of the securities business; or

(II) a felony conviction; and

(E) the applicant's financial condition and history.

(ii) An applicant's Social Security number is a private record under Subsection 63G-2-302(1)(i).

(c) The division may, by rule or order, require an applicant for an initial license to publish an announcement of the application in one or more specified newspapers published in this state.

(d) A license or notice filing of a broker-dealer, agent, investment adviser, or investment adviser representative expires on December 31 of each year.

(e) (i) If no denial order is in effect and no proceeding is pending under Section 61-1-6, a license becomes effective at noon of the 30th day after an application is filed.

(ii) The division may by rule or order specify an earlier effective date and may by

order defer the effective date until noon of the 30th day after the filing of any amendment.

(iii) Licensing of a broker-dealer automatically constitutes licensing of only one partner, officer, director, or a person occupying a similar status or performing similar functions as a licensed agent of the broker-dealer.

(iv) Licensing of an investment adviser automatically constitutes licensing of only one partner, officer, director, or a person occupying a similar status or performing similar functions.

(v) (A) For purposes of the activities of a licensee in this state, during the time period that a broker-dealer or investment adviser is licensed in this state:

(I) the broker-dealer shall maintain a principal; and

(II) the investment adviser shall maintain a designated official.

(B) The division may by rule made in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, provide a process for a person to identify for the division:

(I) a principal or designated official at the time a license is issued; and

(II) a different principal or designated official if:

(Aa) a broker-dealer changes its principal; or

(Bb) an investment adviser changes its designated official.

(C) A principal or designated official identified in Subsection (1)(e)(v)(A) is not required to be separately licensed with the division.

(2) Except with respect to a federal covered adviser whose only clients are those described in Subsection 61-1-3(3)(b) or (3)(c)(iii), a federal covered adviser shall file with the division, before acting as a federal covered adviser in this state, a notice filing consisting of the documents filed with the Securities and Exchange Commission as the division by rule or order may require.

(3) (a) An applicant for an initial or renewal license as a broker-dealer or agent shall pay a reasonable filing fee as determined under Section 61-1-18.4.

(b) An applicant for an initial or renewal license as an investment adviser or investment adviser representative who is subject to licensing under this chapter shall pay a reasonable filing fee as determined under Section 61-1-18.4.

(c) A person acting as a federal covered adviser in this state shall pay an initial and renewal notice filing fee as determined under Section 61-1-18.4.

(d) If the license or renewal is not granted or the application is withdrawn, the division shall retain the fee.

(4) A licensed broker-dealer or investment adviser may file an application for licensing of a successor for the unexpired portion of the year. There shall be no filing fee.

(5) The division may by rule or order:

(a) require a minimum capital for a licensed broker-dealer, subject to the limitations of Section 15 of the Securities Exchange Act of 1934; and

(b) establish minimum financial requirements for an investment adviser:

(i) subject to the limitations of Section 222 of the Investment Advisers Act of 1940; and

(ii) which may include different requirements for an investment adviser who maintains custody of or has discretionary authority over client funds or securities and an

investment adviser who does not.

(6) (a) The division may by rule or order require a licensed broker-dealer or investment adviser who has custody of or discretionary authority over client funds or securities to post one or more bonds in amounts and under conditions as the division may prescribe, subject to the limitations of Section 15 of the Securities Exchange Act of 1934 for a broker-dealer, and Section 222 of the Investment Advisers Act of 1940 for an investment adviser.

(b) An appropriate deposit of cash or securities may be accepted in lieu of a required bond.

(c) A bond may not be required of a licensee whose net capital, or in the case of an investment adviser whose minimum financial requirements, which may be defined by rule, exceeds the amounts required by the division.

(d) A bond shall provide for suit on the bond by a person who has a cause of action under Section 61-1-22 and, if the division by rule or order requires, by any person who has a cause of action not arising under this chapter.

(e) A bond shall provide that a suit may not be maintained to enforce liability on the bond unless brought before the earlier of:

(i) the expiration of five years after the act or transaction constituting the violation; or

(ii) the expiration of two years after the discovery by the plaintiff of the facts constituting the violation.

Amended by Chapter 426, 2013 General Session

61-1-5. Postlicensing provisions.

(1) (a) Every licensed broker-dealer and investment adviser shall make and keep such accounts, correspondence, memoranda, papers, books, and other records as the division by rule prescribes, except as provided in:

(i) Section 15 of the Securities Exchange Act of 1934 in the case of a broker-dealer; and

(ii) Section 222 of the Investment Advisers Act of 1940 in the case of an investment adviser.

(b) All required records regarding an investment adviser shall be preserved for the period as the division prescribes by rule or order.

(2) (a) Every licensed broker-dealer shall, within 24 hours after demand, furnish to any customer or principal for whom the broker-dealer has executed any order for the purchase or sale of any securities, either for immediate or future delivery, a written statement showing:

(i) the time when the securities were bought and sold;

(ii) the place where the securities were bought and sold; and

(iii) the price at which the securities were bought and sold.

(b) With respect to investment advisers, the division may require that certain information be furnished or disseminated as necessary or appropriate in the public interest or for the protection of investors and advisory clients.

(c) To the extent determined by the director, information furnished to clients or prospective clients of an investment adviser who would be in compliance with the

Investment Advisers Act of 1940 and the rules under the Investment Advisers Act of 1940 may be considered to satisfy this requirement.

(3) Every licensed broker-dealer and investment adviser shall file financial reports as the division by rule prescribes, except as provided in:

(a) Section 15 of the Securities Exchange Act of 1934 in the case of a broker-dealer; and

(b) Section 222 of the Investment Advisers Act of 1940 in the case of an investment adviser.

(4) If the information contained in any document filed with the division is or becomes inaccurate or incomplete in any material respect, the licensee or federal covered adviser shall promptly file a correcting amendment if the document is filed with respect to a licensee, or when such amendment is required to be filed with the Securities and Exchange Commission if the document is filed with respect to a federal covered adviser, unless notification of the correction has been given under Section 61-1-3.

(5) (a) All the records referred to in Subsection (1) are subject at any time or from time to time to reasonable periodic, special, or other examinations by representatives of the division, within or without this state, as the division considers necessary or appropriate in the public interest or for the protection of investors.

(b) For the purpose of avoiding unnecessary duplication of examination, the division may cooperate with:

- (i) the securities administrators of other states;
- (ii) the Securities and Exchange Commission; and
- (iii) national securities exchanges or national securities associations registered under the Securities Exchange Act of 1934.

Amended by Chapter 292, 2007 General Session

61-1-6. Denial, suspension, revocation, cancellation, or withdrawal of license -- Sanctions.

(1) Subject to the other provisions of this section and by means of an adjudicative proceeding conducted in accordance with Title 63G, Chapter 4, Administrative Procedures Act:

- (a) the commission may issue an order:
 - (i) suspending or revoking a license;
 - (ii) barring or censuring a licensee or an officer, director, partner, or person occupying a similar status or performing similar functions for a licensee from employment with a licensed broker-dealer or investment adviser;
 - (iii) restricting or limiting a licensee as to a function or activity of the business for which a license is required in this state;
 - (iv) imposing a fine; or
 - (v) taking any combination of actions under this Subsection (1)(a); or
- (b) the director may deny a license.

(2) (a) The commission may impose a sanction in accordance with Subsection (1)(a) or the director may impose a sanction in accordance with Subsection (1)(b) if the commission or director finds:

(i) that it is in the public interest; and
(ii) with respect to the applicant or licensee or, in the case of a broker-dealer or investment adviser, a partner, officer, or director, or a person occupying a similar status or performing similar functions, or a person directly or indirectly controlling the broker-dealer or investment adviser, that the person:

(A) has filed an application for a license that, as of the effective date of the application or as of any date after filing in the case of an order denying effectiveness:

(I) was incomplete in a material respect; or

(II) contained a statement that was, in light of the circumstances under which it was made, false or misleading with respect to a material fact;

(B) has willfully violated or willfully failed to comply with this chapter or a predecessor act or a rule or order under this chapter or a predecessor act;

(C) was convicted of, or entered a plea of guilty, a plea of no contest, a plea in abeyance, or a similar plea of guilty to:

(I) a misdemeanor involving:

(Aa) fraud or dishonesty; or

(Bb) a security or any aspect of the securities business; or

(II) a felony;

(D) is permanently or temporarily enjoined by a court of competent jurisdiction from engaging in or continuing a conduct or practice involving any aspect of the securities business;

(E) (I) is the subject of an order of the commission or a predecessor suspending or revoking a license as a broker-dealer, agent, investment adviser, or investment adviser representative; or

(II) is the subject of an order of the director or a predecessor denying a license as a broker-dealer, agent, investment adviser, or investment adviser representative;

(F) subject to Subsection (2)(b), is the subject of:

(I) an adjudication or determination, within the past five years by a securities or commodities agency or administrator of another state, Canadian province or territory, or a court of competent jurisdiction that the person has willfully violated:

(Aa) the Securities Act of 1933;

(Bb) the Securities Exchange Act of 1934;

(Cc) the Investment Advisers Act of 1940;

(Dd) the Investment Company Act of 1940;

(Ee) the Commodity Exchange Act; or

(Ff) the securities or commodities law of another state; or

(II) an order:

(Aa) entered within the past five years by the securities administrator of a state or Canadian province or territory or by the Securities and Exchange Commission denying or revoking a license as a broker-dealer, agent, investment adviser, or investment adviser representative, or the substantial equivalent of those terms;

(Bb) of the Securities and Exchange Commission suspending or expelling the person from a national securities exchange or national securities association registered under the Securities Exchange Act of 1934; or

(Cc) that is a United States post office fraud order;

(G) has engaged in dishonest or unethical practices in the securities business;

(H) is insolvent, either in the sense that liabilities exceed assets or in the sense that obligations cannot be met as they mature, except that the director or commission may not enter an order against a broker-dealer or investment adviser under this Subsection (2)(a)(ii)(H) without a finding of insolvency as to the broker-dealer or investment adviser;

(I) is not qualified on the basis of the lack of training, experience, and knowledge of the securities business, except as otherwise provided in Subsection (5);

(J) has failed reasonably to supervise the person's:

(I) agents or employees, if the person is a broker-dealer; or

(II) investment adviser representatives or employees, if the person is an investment adviser;

(K) has failed to pay the proper filing fee within 30 days after being notified by the division of a deficiency;

(L) subject to Subsection (2)(c), is a licensee or applicant that is materially the same entity as an entity that is defunct, insolvent, statutorily disqualified, barred, or described in Subsection (2)(a)(ii)(D); or

(M) has had a final judgment entered against the person in a civil action on grounds of:

(I) fraud;

(II) embezzlement;

(III) misrepresentation; or

(IV) deceit.

(b) (i) The commission may not commence an agency action to revoke or suspend a license under Subsection (2)(a)(ii)(F) more than one year from the day on which the order on which the division relies is entered.

(ii) The commission or director may not enter an order under Subsection (2)(a)(ii)(F) on the basis of an order under another state's law unless that order is issued on the basis of facts that would constitute a ground for an agency action under this section on the day on which the notice of agency action is filed.

(c) (i) For purposes of Subsection (2)(a)(ii)(L), the director or commission may consider one or more factors in determining whether an entity is materially the same as another entity including the following:

(A) the entity has one or more of the same executive officers as the prior entity;

(B) the entity conducts operations in the same location as the prior entity;

(C) the entity employs two or more agents from the prior entity;

(D) the entity solicits or serves two or more customers of the prior entity;

(E) the entity has a name similar to the prior entity; or

(F) another factor showing a relationship between the entity and the prior entity.

(ii) In addition to imposing a sanction in accordance with Subsection (1), for an entity that is materially the same as an entity described in Subsection (2)(a)(ii)(L), the director or the commission may:

(A) limit the license of the entity; or

(B) require additional disclosures to the customers or employees of the entity.

(3) The director may enter a denial order under Subsection (2)(a)(ii)(K), but shall vacate the order when the deficiency is corrected.

(4) The division may not institute a suspension or revocation proceeding on the

basis of a fact or transaction known to the division when the license became effective unless the proceeding is instituted within the 120 days after the day on which the license takes effect.

(5) The following provisions govern the application of Subsection (2)(a)(ii)(I):

(a) The director or commission may not enter an order against a broker-dealer on the basis of the lack of qualification of a person other than:

- (i) the broker-dealer if the broker-dealer is an individual; or
- (ii) an agent of the broker-dealer.

(b) The director or commission may not enter an order against an investment adviser on the basis of the lack of qualification of a person other than:

- (i) the investment adviser if the investment adviser is an individual; or
- (ii) an investment adviser representative.

(c) The director or commission may not enter an order solely on the basis of lack of experience if the applicant or licensee is qualified by training or knowledge.

(d) The director or commission shall consider that:

- (i) an agent who will work under the supervision of a licensed broker-dealer need not have the same qualifications as a broker-dealer; and
- (ii) an investment adviser representative who will work under the supervision of a licensed investment adviser need not have the same qualifications as an investment adviser.

(e) (i) The director or commission shall consider that an investment adviser is not necessarily qualified solely on the basis of experience as a broker-dealer or agent.

(ii) When the director finds that an applicant for a license as a broker-dealer is not qualified as an investment adviser, the director may condition the applicant's license as a broker-dealer upon the applicant's not transacting business in this state as an investment adviser.

(f) (i) The division may by rule provide for examinations, which may be written or oral or both, to be taken by any class of or all applicants.

(ii) The division may by rule or order waive the examination requirement as to a person or class of persons if the division determines that the examination is not necessary for the protection of investors.

(6) If the director finds that a licensee or applicant for a license is no longer in existence, has ceased to do business as a broker-dealer, agent, investment adviser, or investment adviser representative, or is subject to an adjudication of mental incompetence or to the control of a committee, conservator, or guardian, or cannot be located after reasonable search, the division may summarily cancel or deny the license or application according to the procedures and requirements of Title 63G, Chapter 4, Administrative Procedures Act.

(7) (a) Withdrawal from license as a broker-dealer, agent, investment adviser, or investment adviser representative becomes effective 30 days after receipt of an application to withdraw or within a shorter period of time as determined by the director, unless:

(i) a revocation or suspension proceeding is pending when the application is filed;

(ii) a proceeding to revoke or suspend or to impose conditions upon the withdrawal is instituted within 30 days after the application is filed; or

(iii) additional information is requested by the division regarding the withdrawal application.

(b) (i) If a proceeding described in Subsection (7)(a) is pending or instituted, the director shall designate by order when and under what conditions the withdrawal becomes effective.

(ii) If additional information is requested, withdrawal is effective 30 days after the additional information is filed.

(c) (i) If no proceeding is pending or instituted, and withdrawal automatically becomes effective, the director may initiate a revocation or suspension proceeding under this section within one year after withdrawal becomes effective.

(ii) The commission shall enter an order under Subsection (2)(a)(ii)(B) as of the last date on which the license is effective.

Amended by Chapter 351, 2009 General Session

61-1-6.5. Court-ordered discipline.

The division shall promptly withhold, suspend, restrict, or reinstate the use of a license issued under this chapter if so ordered by a court.

Enacted by Chapter 232, 1997 General Session

61-1-7. Registration before sale.

It is unlawful for any person to offer or sell any security in this state unless it is registered under this chapter, the security or transaction is exempted under Section 61-1-14, or the security is a federal covered security for which a notice filing has been made pursuant to the provisions of Section 61-1-15.5.

Amended by Chapter 160, 1997 General Session

61-1-9. Registration by coordination.

(1) A security for which a registration statement or a notification under Regulation A or a successor to Regulation A is filed under the Securities Act of 1933 in connection with the same offering may be registered by coordination.

(2) A registration statement under this section shall contain the following information and be accompanied by the following documents in addition to the information specified in Subsection 61-1-11(3) and the consent to service of process required by Section 61-1-26:

(a) one copy of the disclosure statement together with all its amendments filed under the Securities Act of 1933;

(b) if the division by rule or otherwise requires, a copy of the articles of incorporation and bylaws or their substantial equivalents currently in effect, a copy of any agreements with or among underwriters, a copy of any indenture or other instrument governing the issuance of the security to be registered and a specimen or copy of the security;

(c) if the division requests, any other information, or copies of any other documents, filed under the Securities Act of 1933; and

(d) an undertaking to forward all future amendments to the disclosure statement promptly and in any event not later than the first working day after the day they are forwarded to or filed with the Securities and Exchange Commission, whichever first occurs.

(3) A registration statement under this section automatically becomes effective at the moment the disclosure statement becomes effective if all the following conditions are satisfied:

(a) no stop order is in effect and no proceeding is pending under Section 61-1-12;

(b) the disclosure statement is on file with the division for at least 20 working days; and

(c) a statement of the maximum and minimum proposed offering prices and the maximum underwriting discounts and commissions is on file for two full working days or such shorter period as the division permits by rule or otherwise and the offering is made within those limitations.

(4) (a) A registrant shall promptly:

(i) notify the division in a record of the date and time when the disclosure statement became effective and the content of the price amendment, if any; and

(ii) file a posteffective amendment containing the information and documents in the price amendment.

(b) "Price amendment" means the final federal amendment that includes a statement of the:

(i) offering price;

(ii) underwriting and selling discounts or commissions;

(iii) amount of proceeds;

(iv) conversion rates;

(v) call prices; and

(vi) other matters dependent upon the offering price.

(5) (a) Upon failure to receive the required notification and posteffective amendment with respect to the price amendment, the division may enter a stop order, without notice or hearing, retroactively denying effectiveness to the registration statement or suspending its effectiveness until compliance with Subsection (4), if the division promptly notifies the registrant in a record of the issuance of the order.

(b) If the registrant proves compliance with the requirements of Subsection (4) as to notice and posteffective amendment, the stop order is void as of the time of its entry.

(6) The division may by rule or otherwise waive either or both of the conditions specified in Subsections (3)(b) and (3)(c).

(7) If the disclosure statement becomes effective before all the conditions in Subsections (3)(b) and (3)(c) are satisfied and they are not waived, the disclosure statement automatically becomes effective as soon as all the conditions are satisfied.

(8) If the registrant advises the division of the date when the disclosure statement is expected to become effective, the division shall promptly advise the registrant in a record, at the registrant's expense, whether all the conditions are satisfied and whether it then contemplates the institution of proceedings under Section 61-1-12, but this advice by the division does not preclude the institution of such a

proceeding at any time.

(9) The division may by rule or order permit registration by coordination of a security for which a notification or similar document is filed under the Securities Act of 1933 in connection with the same offering.

Amended by Chapter 351, 2009 General Session

61-1-10. Registration by qualification.

(1) Application may be made to register any security by qualification.

(2) A registration statement under this section shall contain the following information and be accompanied by the following documents in addition to the information specified in Subsection 61-1-11(3) and the consent to service of process required by Section 61-1-26:

(a) with respect to the issuer and any significant subsidiary:

(i) its name, address, and form of organization;

(ii) the state or foreign jurisdiction and date of its organization;

(iii) the general character and location of its business;

(iv) a description of its physical properties and equipment; and

(v) a statement of the general competitive conditions in the industry or business in which it is or will be engaged;

(b) with respect to every director and officer of the issuer or person occupying a similar status or performing similar functions:

(i) his name, address, and principal occupation for the past five years;

(ii) the amount of securities of the issuer held by him as of a specified date within 30 days of the filing of the registration statement;

(iii) the amount of the securities covered by the registration statement to which he has indicated his intention to subscribe; and

(iv) a description of any material interest in any material transaction with the issuer or any significant subsidiary affected within the past three years or proposed to be affected;

(c) with respect to persons covered by Subsection (2)(b), the remuneration paid during the past 12 months and estimated to be paid during the next 12 months, directly or indirectly, by the issuer, together with all predecessors, parents, subsidiaries, and affiliates, to all those persons in the aggregate;

(d) with respect to any person owning of record, or beneficially if known, 10% or more of the outstanding shares of any class of equity security of the issuer, the information specified in Subsection (2)(b) other than the person's occupation;

(e) with respect to every promoter if the issuer was organized within the past three years, the information specified in Subsection (2)(b), any amount paid to the promoter within that period or intended to be paid to the promoter, and the consideration for any such payment;

(f) with respect to any person on whose behalf any part of the offering is to be made in a nonissuer distribution:

(i) the person's name and address;

(ii) the amount of securities of the issuer held by the person as of the date of filing of the registration statement;

(iii) a description of any material interest in any material transaction with the issuer or any significant subsidiary effected within the past three years or proposed to be effected; and

(iv) a statement of the person's reasons for making the offering;

(g) the capitalization and long-term debt, on both a current and pro forma basis, of the issuer and any significant subsidiary, including a description of each security outstanding or being registered or otherwise offered, and a statement of the amount and kind of consideration, whether in the form of cash, physical assets, services, patents, goodwill, or anything else, for which the issuer or any subsidiary has issued any of its securities within the past two years or is obligated to issue any of its securities;

(h) (i) the kind and amount of securities to be offered;

(ii) the proposed offering price or the method by which it is to be computed;

(iii) any variation therefrom at which any proportion of the offering is to be made to any person or class of persons other than the underwriters, with a specification of any such person or class;

(iv) the basis upon which the offering is to be made if otherwise than for cash;

(v) the estimated aggregate underwriting and selling discounts or commissions and finders' fees, including separately cash, securities, contracts, or anything else of value to accrue to the underwriters or finders in connection with the offering, or, if the selling discounts or commissions are variable, the basis of determining them and their maximum and minimum amounts;

(vi) the estimated amounts of other selling expenses, including legal, engineering, and accounting charges;

(vii) the name and address of every underwriter and every recipient of a finder's fee;

(viii) a copy of any underwriting or selling-group agreement under which the distribution is to be made, or the proposed form of any such agreement whose terms have not yet been determined; and

(ix) a description of the plan of distribution of any securities which are to be offered otherwise than through an underwriter;

(i) (i) the estimated cash proceeds to be received by the issuer from the offering;

(ii) the purposes for which the proceeds are to be used by the issuer;

(iii) the amount to be used for each purpose;

(iv) the order or priority in which the proceeds will be used for the purposes stated;

(v) the amounts of any funds to be raised from other sources to achieve the purposes stated and the sources of any such funds; and

(vi) if any part of the proceeds is to be used to acquire any property, including goodwill, otherwise than in the ordinary course of business, the names and addresses of the vendors, the purchase price, the names of any persons who have received commissions in connection with the acquisition, and the amounts of any such commissions and any other expense in connection with the acquisition, including the cost of borrowing money to finance the acquisition;

(j) a description of any stock options or other security options outstanding, or to be created in connection with the offering, together with the amount of any such option

held or to be held by every person required to be named in Subsection (2)(b), (d), (e), (f), or (h) and by any person who holds or will hold 10% or more in the aggregate of any such options;

(k) (i) the dates of, parties to, and general effect concisely stated of, every management or other material contract made or to be made otherwise than in the ordinary course of business if it is to be performed in whole or in part at or after the filing of the registration statement or was made within the past two years, together with a copy of every such contract; and

(ii) a description of any pending litigation or proceeding to which the issuer is a party and which materially affects its business or assets, including any such litigation or proceeding known to be contemplated by governmental authorities;

(l) a copy of any prospectus, pamphlet, circular, form letter, advertisement, or other sales literature intended as of the effective date to be used in connection with the offering;

(m) (i) a specimen copy of the security being registered;

(ii) a copy of the issuer's articles of incorporation, and bylaws, if any, or their substantial equivalents, as currently in effect; and

(iii) a copy of any indenture or other instrument covering the security to be registered;

(n) a signed or conformed copy of an opinion of counsel as to the legality of the security being registered, with an English translation if it is in a foreign language, which shall state whether the security when sold will be legally issued, fully paid, and nonassessable, and if a debt security, a binding obligation of the issuer;

(o) the written consent of any accountant, engineer, appraiser, or other person whose profession gives authority to a statement made by him, if that person is named as having prepared or certified a report or valuation, other than a public and official document or statement, which is used in connection with the registration statement;

(p) (i) a balance sheet of the issuer as of a date within four months prior to the filing of the registration statement;

(ii) a profit and loss statement and analysis of retained earnings for each of the three fiscal years preceding the date of the balance sheet and for any period between the close of the last fiscal year and the date of the balance sheet, or for the period of the issuer's and any predecessors' existence if less than three years; and

(iii) if any part of the proceeds of the offering is to be applied to the purchase of any business, the same financial statements which would be required if that business were the registrant; and

(q) such additional information or verification of any statement as the division requires by rule or order.

(3) A registration statement under this section becomes effective when the division so orders.

(4) As a condition of registration under this section, a prospectus containing the information, but not containing copies of contracts or agreements specified in Subsections (2)(a) through (k) and (p) shall be sent or given to each person to whom an offer is made before or concurrently with:

(a) the first written offer made to the person, otherwise than by means of a public advertisement, by or for the account of the issuer or any other person on whose

behalf the offering is being made, or by any underwriter or broker-dealer who is offering part of an unsold allotment or subscription taken by the person as a participant in the distribution;

- (b) the confirmation of any sale made by or for the account of any such person;
- (c) payment pursuant to any such sale; or
- (d) delivery of the security pursuant to any such sale, whichever occurs first.

Amended by Chapter 340, 2011 General Session

61-1-11. Provisions applicable to registration generally.

(1) A registration statement may be filed by the issuer, another person on whose behalf the offering is to be made, or a licensed broker-dealer.

(2) A person filing a registration statement shall pay a filing fee as determined under Section 61-1-18.4.

(3) A registration statement shall specify:

- (a) the amount of securities to be offered in this state;
- (b) the states in which a registration statement or similar document in connection with the offering is or is to be filed; and
- (c) an adverse order, judgment, or decree entered in connection with the offering by the regulatory authorities in each state or by a court or the Securities and Exchange Commission.

(4) A document filed under this chapter or a predecessor act within five years preceding the filing of a registration statement may be incorporated by reference in the registration statement to the extent that the document is currently accurate.

(5) The division may permit the omission of an item of information or document from a registration statement.

(6) In the case of a nonissuer distribution, information may not be required under Subsection (9) or Section 61-1-10 unless it is known to the person filing the registration statement or to the persons on whose behalf the distribution is to be made, or can be furnished by them without unreasonable effort or expense.

(7) (a) The division may require as a condition of registration by qualification or coordination:

- (i) that security issued within the past three years or to be issued to a promoter for a consideration substantially different from the public offering price, or to a person for a consideration other than cash, be deposited in escrow; and
- (ii) that the proceeds from the sale of the registered security be impounded until the issuer receives a specified amount from the sale of the security either in this state or elsewhere.

(b) The division may determine the conditions of an escrow or impounding required by this Subsection (7), but it may not reject a depository solely because of location in another state.

(8) (a) A registration statement is effective for one year from its effective date.

(b) All outstanding securities of the same class as a registered security are considered to be registered for the purpose of a nonissuer transaction:

- (i) so long as the registration statement is effective; and
- (ii) between the 30th day after the entry of a stop order suspending or revoking

the effectiveness of the registration statement under Section 61-1-12, if the registration statement did not relate in whole or in part to a nonissuer distribution, and one year from the effective date of the registration statement.

(c) A registration statement may not be withdrawn for one year from its effective date if a security of the same class is outstanding.

(d) A registration statement may be withdrawn otherwise only in the discretion of the division.

(9) So long as a registration statement is effective and the offering is not completely sold, the division may require the person who filed the registration statement to file reports, not more often than quarterly, to keep reasonably current the information contained in the registration statement and to disclose the progress of the offering.

(10) (a) A registration statement may be amended after its effective date so as to increase the securities specified to be offered and sold, if the public offering price and underwriters' discounts and commissions are not changed from the respective amounts of which the division was informed.

(b) The amendment becomes effective when the division so orders.

(c) A person filing an amendment shall pay a registration fee as determined under Section 61-1-18.4 with respect to the additional securities proposed to be offered.

(d) The amendment relates back to the date of the sale of the additional security being registered, provided that within six months of the date of the sale the amendment is filed and the additional registration fee is paid.

(11) (a) A security that is offered or sold under Section 4(5) of the Securities Act of 1933 or that is a "mortgage related security" as defined in Section 3(a)(41) of the Securities Exchange Act of 1934 may not be exempt under Subsection 61-1-14(1)(a) to the same extent as an obligation issued by or guaranteed as to principal and interest by the United States or an agency or instrumentality of the United States. Accordingly, any such security shall comply with the applicable registration and qualification requirements set forth in this chapter.

(b) This Subsection (11) specifically overrides the preemption of state law contained in Section 106(c) of the Secondary Mortgage Market Enhancement Act of 1984, Public Law Number 98-440.

Amended by Chapter 351, 2009 General Session

61-1-11.1. Hearings for certain exchanges of securities.

(1) An application may be made to the division for approval to issue securities or to deliver other consideration in exchange for:

(a) one or more outstanding securities, claims, or property interests; or

(b) partly in exchange for one or more outstanding securities, claims, or property interests, and partly for cash.

(2) The director may:

(a) hold a hearing upon the fairness of the terms and conditions of an exchange described in Subsection (1); and

(b) approve or disapprove the terms and conditions of an exchange described in Subsection (1).

(3) After conducting a hearing under this section, if the director finds that the

terms and conditions of an exchange described in Subsection (1) are fair to those to whom the securities will be issued, the director may:

(a) approve the fairness of the terms and conditions of the exchange described in Subsection (1); and

(b) approve the exchange described in Subsection (1).

(4) In a hearing under this section, all persons to whom it is proposed to issue securities or to deliver other consideration in an exchange under Subsection (1) may appear.

(5) An application under Subsection (1) shall contain the information and be accompanied by the documents required by rule or order of the division.

(6) A person filing an application under Subsection (1) shall pay a filing fee as determined under Section 61-1-18.4.

(7) An applicant under this section shall provide adequate notice of any hearing under this section to all persons that have a right to appear, under Subsection (4), at the hearing.

(8) An application may be made under this section regardless of whether the security or transaction being issued is:

(a) exempt from registration; or

(b) not required to be registered.

(9) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the division may establish rules to govern the conduct of a hearing permitted by this section in accordance with Sections 61-1-18.5 and 61-1-24.

(10) This section is intended to provide for a fairness hearing that satisfies the requirements of Securities Act of 1933, Section 3(a)(10), 15 U.S.C. Section 77c(a)(10), or any comparable section that may subsequently be enacted.

Amended by Chapter 351, 2009 General Session

61-1-12. Denial, suspension, and revocation of registration.

(1) Upon approval by a majority of the commission, the director, by means of an adjudicative proceeding conducted in accordance with Title 63G, Chapter 4, Administrative Procedures Act, may issue a stop order that denies effectiveness to, or suspends or revokes the effectiveness of, any securities registration statement and may impose a fine if the director finds that the order is in the public interest and that:

(a) the registration statement, as of its effective date or as of any earlier date in the case of an order denying effectiveness, or an amendment under Subsection 61-1-11(10) as of its effective date, or a report under Subsection 61-1-11(9), is incomplete in a material respect, or contains a statement that was, in the light of the circumstances under which it was made, false or misleading with respect to a material fact;

(b) this chapter, or a rule, order, or condition lawfully imposed under this chapter, is willfully violated, in connection with the offering, by:

(i) the person filing the registration statement;

(ii) the issuer, a partner, officer, or director of the issuer, a person occupying a similar status or performing similar functions, or a person directly or indirectly controlling or controlled by the issuer, but only if the person filing the registration statement is

directly or indirectly controlled by or acting for the issuer; or

(iii) an underwriter;

(c) subject to Subsection (5), the security registered or sought to be registered is the subject of an administrative stop order or similar order, or a permanent or temporary injunction of a court of competent jurisdiction entered under another federal or state act applicable to the offering;

(d) the issuer's enterprise or method of business includes or would include activities that are illegal where performed;

(e) the offering has worked or tended to work a fraud upon purchasers or would so operate;

(f) the offering is or would be made with unreasonable amounts of underwriters' and sellers' discounts, commissions, or other compensation, or promoters' profits or participation, or unreasonable amounts or kinds of options;

(g) when a security is sought to be registered by coordination, there is a failure to comply with the undertaking required by Subsection 61-1-9(2)(d); or

(h) the applicant or registrant has failed to pay the proper filing fee.

(2) The director may enter an order under this section but may vacate the order if the director finds that the conditions that prompted its entry have changed or that it is otherwise in the public interest to do so.

(3) The director may not issue a stop order against an effective registration statement on the basis of a fact or transaction known to the division when the registration statement became effective unless the proceeding is instituted within the 120 days after the day on which the registration statement becomes effective.

(4) A person may not be considered to have violated Section 61-1-7 or 61-1-15 by reason of an order or sale effected after the entry of an order under this section if that person proves by a preponderance of the evidence that the person did not know, and in the exercise of reasonable care could not have known, of the order.

(5) (a) The director may not commence agency action against an effective registration statement under Subsection (1)(c) more than one year from the day on which the order or injunction on which the director relies is issued.

(b) The director may not enter an order under Subsection (1)(c) on the basis of an order or injunction entered under the securities act of another state unless that order or injunction is issued on the basis of facts that would constitute a ground for a stop order under this section at the time the director commences the agency action.

Amended by Chapter 351, 2009 General Session

61-1-13. Definitions.

(1) As used in this chapter:

(a) "Affiliate" means a person that, directly or indirectly, through one or more intermediaries, controls or is controlled by, or is under common control with a person specified.

(b) (i) "Agent" means an individual other than a broker-dealer who represents a broker-dealer or issuer in effecting or attempting to effect purchases or sales of securities.

(ii) "Agent" does not include an individual who represents:

(A) an issuer, who receives no commission or other remuneration, directly or indirectly, for effecting or attempting to effect purchases or sales of securities in this state, and who effects transactions:

(I) in securities exempted by Subsection 61-1-14(1)(a), (b), (c), or (g);

(II) exempted by Subsection 61-1-14(2);

(III) in a covered security as described in Sections 18(b)(3) and 18(b)(4)(D) of the Securities Act of 1933; or

(IV) with existing employees, partners, officers, or directors of the issuer; or

(B) a broker-dealer in effecting transactions in this state limited to those transactions described in Section 15(h)(2) of the Securities Exchange Act of 1934.

(iii) A partner, officer, or director of a broker-dealer or issuer, or a person occupying a similar status or performing similar functions, is an agent only if the partner, officer, director, or person otherwise comes within the definition of "agent."

(iv) "Agent" does not include a person described in Subsection (3).

(c) (i) "Broker-dealer" means a person engaged in the business of effecting transactions in securities for the account of others or for the person's own account.

(ii) "Broker-dealer" does not include:

(A) an agent;

(B) an issuer;

(C) a depository institution or trust company;

(D) a person who has no place of business in this state if:

(I) the person effects transactions in this state exclusively with or through:

(Aa) the issuers of the securities involved in the transactions;

(Bb) other broker-dealers;

(Cc) a depository institution, whether acting for itself or as a trustee;

(Dd) a trust company, whether acting for itself or as a trustee;

(Ee) an insurance company, whether acting for itself or as a trustee;

(Ff) an investment company, as defined in the Investment Company Act of 1940, whether acting for itself or as a trustee;

(Gg) a pension or profit-sharing trust, whether acting for itself or as a trustee; or

(Hh) another financial institution or institutional buyer, whether acting for itself or as a trustee; or

(II) during any period of 12 consecutive months the person does not direct more than 15 offers to sell or buy into this state in any manner to persons other than those specified in Subsection (1)(c)(ii)(D)(I), whether or not the offeror or an offeree is then present in this state;

(E) a general partner who organizes and effects transactions in securities of three or fewer limited partnerships, of which the person is the general partner, in any period of 12 consecutive months;

(F) a person whose participation in transactions in securities is confined to those transactions made by or through a broker-dealer licensed in this state;

(G) a person who is a principal broker or associate broker licensed in this state and who effects transactions in a bond or other evidence of indebtedness secured by a real or chattel mortgage or deed of trust, or by an agreement for the sale of real estate or chattels, if the entire mortgage, deed of trust, or agreement, together with all the bonds or other evidences of indebtedness secured thereby, is offered and sold as a

unit;

(H) a person effecting transactions in commodity contracts or commodity options;

(I) a person described in Subsection (3); or

(J) other persons as the division, by rule or order, may designate, consistent with the public interest and protection of investors, as not within the intent of this Subsection (1)(c).

(d) "Buy" or "purchase" means a contract for purchase of, contract to buy, or acquisition of a security or interest in a security for value.

(e) "Commission" means the Securities Commission created in Section 61-1-18.5.

(f) "Commodity" means, except as otherwise specified by the division by rule:

(i) an agricultural, grain, or livestock product or byproduct, except real property or a timber, agricultural, or livestock product grown or raised on real property and offered or sold by the owner or lessee of the real property;

(ii) a metal or mineral, including a precious metal, except a numismatic coin whose fair market value is at least 15% greater than the value of the metal it contains;

(iii) a gem or gemstone, whether characterized as precious, semi-precious, or otherwise;

(iv) a fuel, whether liquid, gaseous, or otherwise;

(v) a foreign currency; and

(vi) all other goods, articles, products, or items of any kind, except a work of art offered or sold by art dealers, at public auction or offered or sold through a private sale by the owner of the work.

(g) (i) "Commodity contract" means an account, agreement, or contract for the purchase or sale, primarily for speculation or investment purposes and not for use or consumption by the offeree or purchaser, of one or more commodities, whether for immediate or subsequent delivery or whether delivery is intended by the parties, and whether characterized as a cash contract, deferred shipment or deferred delivery contract, forward contract, futures contract, installment or margin contract, leverage contract, or otherwise.

(ii) A commodity contract offered or sold shall, in the absence of evidence to the contrary, be presumed to be offered or sold for speculation or investment purposes.

(iii) (A) A commodity contract may not include a contract or agreement that requires, and under which the purchaser receives, within 28 calendar days from the payment in good funds any portion of the purchase price, physical delivery of the total amount of each commodity to be purchased under the contract or agreement.

(B) A purchaser is not considered to have received physical delivery of the total amount of each commodity to be purchased under the contract or agreement when the commodity or commodities are held as collateral for a loan or are subject to a lien of any person when the loan or lien arises in connection with the purchase of each commodity or commodities.

(h) (i) "Commodity option" means an account, agreement, or contract giving a party to the option the right but not the obligation to purchase or sell one or more commodities or one or more commodity contracts, or both whether characterized as an option, privilege, indemnity, bid, offer, put, call, advance guaranty, decline guaranty, or

otherwise.

(ii) "Commodity option" does not include an option traded on a national securities exchange registered:

(A) with the Securities and Exchange Commission; or

(B) on a board of trade designated as a contract market by the Commodity Futures Trading Commission.

(i) "Depository institution" is as defined in Section 7-1-103.

(j) "Director" means the director of the division appointed in accordance with Section 61-1-18.

(k) "Division" means the Division of Securities established by Section 61-1-18.

(l) "Executive director" means the executive director of the Department of Commerce.

(m) "Federal covered adviser" means a person who:

(i) is registered under Section 203 of the Investment Advisers Act of 1940; or

(ii) is excluded from the definition of "investment adviser" under Section 202(a)(11) of the Investment Advisers Act of 1940.

(n) "Federal covered security" means a security that is a covered security under Section 18(b) of the Securities Act of 1933 or rules or regulations promulgated under Section 18(b) of the Securities Act of 1933.

(o) "Fraud," "deceit," and "defraud" are not limited to their common-law meanings.

(p) "Guaranteed" means guaranteed as to payment of principal or interest as to debt securities, or dividends as to equity securities.

(q) (i) "Investment adviser" means a person who:

(A) for compensation, engages in the business of advising others, either directly or through publications or writings, as to the value of securities or as to the advisability of investing in, purchasing, or selling securities; or

(B) for compensation and as a part of a regular business, issues or promulgates analyses or reports concerning securities.

(ii) "Investment adviser" includes a financial planner or other person who:

(A) as an integral component of other financially related services, provides the investment advisory services described in Subsection (1)(q)(i) to others for compensation and as part of a business; or

(B) holds the person out as providing the investment advisory services described in Subsection (1)(q)(i) to others for compensation.

(iii) "Investment adviser" does not include:

(A) an investment adviser representative;

(B) a depository institution or trust company;

(C) a lawyer, accountant, engineer, or teacher whose performance of these services is solely incidental to the practice of the profession;

(D) a broker-dealer or its agent whose performance of these services is solely incidental to the conduct of its business as a broker-dealer and who receives no special compensation for the services;

(E) a publisher of a bona fide newspaper, news column, news letter, news magazine, or business or financial publication or service, of general, regular, and paid circulation, whether communicated in hard copy form, or by electronic means, or

otherwise, that does not consist of the rendering of advice on the basis of the specific investment situation of each client;

(F) a person who is a federal covered adviser;

(G) a person described in Subsection (3); or

(H) such other persons not within the intent of this Subsection (1)(q) as the division may by rule or order designate.

(r) (i) "Investment adviser representative" means a partner, officer, director of, or a person occupying a similar status or performing similar functions, or other individual, except clerical or ministerial personnel, who:

(A) (I) is employed by or associated with an investment adviser who is licensed or required to be licensed under this chapter; or

(II) has a place of business located in this state and is employed by or associated with a federal covered adviser; and

(B) does any of the following:

(I) makes a recommendation or otherwise renders advice regarding securities;

(II) manages accounts or portfolios of clients;

(III) determines which recommendation or advice regarding securities should be given;

(IV) solicits, offers, or negotiates for the sale of or sells investment advisory services; or

(V) supervises employees who perform any of the acts described in this Subsection (1)(r)(i)(B).

(ii) "Investment adviser representative" does not include a person described in Subsection (3).

(s) "Investment contract" includes:

(i) an investment in a common enterprise with the expectation of profit to be derived through the essential managerial efforts of someone other than the investor; or

(ii) an investment by which:

(A) an offeree furnishes initial value to an offerer;

(B) a portion of the initial value is subjected to the risks of the enterprise;

(C) the furnishing of the initial value is induced by the offerer's promises or representations that give rise to a reasonable understanding that a valuable benefit of some kind over and above the initial value will accrue to the offeree as a result of the operation of the enterprise; and

(D) the offeree does not receive the right to exercise practical and actual control over the managerial decisions of the enterprise.

(t) "Isolated transaction" means not more than a total of two transactions that occur anywhere during six consecutive months.

(u) (i) "Issuer" means a person who issues or proposes to issue a security or has outstanding a security that it has issued.

(ii) With respect to a preorganization certificate or subscription, "issuer" means the one or more promoters of the person to be organized.

(iii) "Issuer" means the one or more persons performing the acts and assuming duties of a depositor or manager under the provisions of the trust or other agreement or instrument under which the security is issued with respect to:

(A) interests in trusts, including collateral trust certificates, voting trust

certificates, and certificates of deposit for securities; or

(B) shares in an investment company without a board of directors.

(iv) With respect to an equipment trust certificate, a conditional sales contract, or similar securities serving the same purpose, "issuer" means the person by whom the equipment or property is to be used.

(v) With respect to interests in partnerships, general or limited, "issuer" means the partnership itself and not the general partner or partners.

(vi) With respect to certificates of interest or participation in oil, gas, or mining titles or leases or in payment out of production under the titles or leases, "issuer" means the owner of the title or lease or right of production, whether whole or fractional, who creates fractional interests therein for the purpose of sale.

(v) (i) "Life settlement interest" means the entire interest or a fractional interest in any of the following that is the subject of a life settlement:

(A) a policy; or

(B) the death benefit under a policy.

(ii) "Life settlement interest" does not include the initial purchase from the owner by a life settlement provider.

(w) "Nonissuer" means not directly or indirectly for the benefit of the issuer.

(x) "Person" means:

(i) an individual;

(ii) a corporation;

(iii) a partnership;

(iv) a limited liability company;

(v) an association;

(vi) a joint-stock company;

(vii) a joint venture;

(viii) a trust where the interests of the beneficiaries are evidenced by a security;

(ix) an unincorporated organization;

(x) a government; or

(xi) a political subdivision of a government.

(y) "Precious metal" means the following, whether in coin, bullion, or other form:

(i) silver;

(ii) gold;

(iii) platinum;

(iv) palladium;

(v) copper; and

(vi) such other substances as the division may specify by rule.

(z) "Promoter" means a person who, acting alone or in concert with one or more persons, takes initiative in founding or organizing the business or enterprise of a person.

(aa) (i) Except as provided in Subsection (1)(aa)(ii), "record" means information that is:

(A) inscribed in a tangible medium; or

(B) (I) stored in an electronic or other medium; and

(II) retrievable in perceivable form.

(ii) This Subsection (1)(aa) does not apply when the context requires otherwise,

including when "record" is used in the following phrases:

- (A) "of record";
- (B) "official record"; or
- (C) "public record."

(bb) (i) "Sale" or "sell" includes a contract for sale of, contract to sell, or disposition of, a security or interest in a security for value.

(ii) "Offer" or "offer to sell" includes an attempt or offer to dispose of, or solicitation of an offer to buy, a security or interest in a security for value.

(iii) The following are examples of the definitions in Subsection (1)(bb)(i) or (ii):

(A) a security given or delivered with or as a bonus on account of a purchase of a security or any other thing, is part of the subject of the purchase, and is offered and sold for value;

(B) a purported gift of assessable stock is an offer or sale as is each assessment levied on the stock;

(C) an offer or sale of a security that is convertible into, or entitles its holder to acquire or subscribe to another security of the same or another issuer is an offer or sale of that security, and also an offer of the other security, whether the right to convert or acquire is exercisable immediately or in the future;

(D) a conversion or exchange of one security for another constitutes an offer or sale of the security received in a conversion or exchange, and the offer to buy or the purchase of the security converted or exchanged;

(E) securities distributed as a dividend wherein the person receiving the dividend surrenders the right, or the alternative right, to receive a cash or property dividend is an offer or sale;

(F) a dividend of a security of another issuer is an offer or sale; or

(G) the issuance of a security under a merger, consolidation, reorganization, recapitalization, reclassification, or acquisition of assets constitutes the offer or sale of the security issued as well as the offer to buy or the purchase of a security surrendered in connection therewith, unless the sole purpose of the transaction is to change the issuer's domicile.

(iv) The terms defined in Subsections (1)(bb)(i) and (ii) do not include:

- (A) a good faith gift;
- (B) a transfer by death;
- (C) a transfer by termination of a trust or of a beneficial interest in a trust;
- (D) a security dividend not within Subsection (1)(bb)(iii)(E) or (F); or
- (E) a securities split or reverse split.

(cc) "Securities Act of 1933," "Securities Exchange Act of 1934," and "Investment Company Act of 1940" mean the federal statutes of those names as amended before or after the effective date of this chapter.

(dd) "Securities Exchange Commission" means the United States Securities Exchange Commission created by the Securities Exchange Act of 1934.

(ee) (i) "Security" means a:

- (A) note;
- (B) stock;
- (C) treasury stock;
- (D) bond;

(E) debenture;
(F) evidence of indebtedness;
(G) certificate of interest or participation in a profit-sharing agreement;
(H) collateral-trust certificate;
(I) preorganization certificate or subscription;
(J) transferable share;
(K) investment contract;
(L) burial certificate or burial contract;
(M) voting-trust certificate;
(N) certificate of deposit for a security;
(O) certificate of interest or participation in an oil, gas, or mining title or lease or in payments out of production under such a title or lease;
(P) commodity contract or commodity option;
(Q) interest in a limited liability company;
(R) life settlement interest; or
(S) in general, an interest or instrument commonly known as a "security," or a certificate of interest or participation in, temporary or interim certificate for, receipt for, guarantee of, or warrant or right to subscribe to or purchase an item listed in Subsections (1)(ee)(i)(A) through (R).

(ii) "Security" does not include:

(A) an insurance or endowment policy or annuity contract under which an insurance company promises to pay money in a lump sum or periodically for life or some other specified period;

(B) an interest in a limited liability company in which the limited liability company is formed as part of an estate plan where all of the members are related by blood or marriage, or the person claiming this exception can prove that all of the members are actively engaged in the management of the limited liability company; or

(C) (I) a whole long-term estate in real property;

(II) an undivided fractionalized long-term estate in real property that consists of 10 or fewer owners; or

(III) an undivided fractionalized long-term estate in real property that consists of more than 10 owners if, when the real property estate is subject to a management agreement:

(Aa) the management agreement permits a simple majority of owners of the real property estate to not renew or to terminate the management agreement at the earlier of the end of the management agreement's current term, or 180 days after the day on which the owners give notice of termination to the manager;

(Bb) the management agreement prohibits, directly or indirectly, the lending of the proceeds earned from the real property estate or the use or pledge of its assets to a person or entity affiliated with or under common control of the manager; and

(Cc) the management agreement complies with any other requirement imposed by rule by the Real Estate Commission under Section 61-2f-103.

(iii) For purposes of Subsection (1)(ee)(ii)(B), evidence that members vote or have the right to vote, or the right to information concerning the business and affairs of the limited liability company, or the right to participate in management, may not establish, without more, that all members are actively engaged in the management of

the limited liability company.

(ff) "State" means a state, territory, or possession of the United States, the District of Columbia, and Puerto Rico.

(gg) (i) "Undivided fractionalized long-term estate" means an ownership interest in real property by two or more persons that is:

(A) a tenancy in common; or

(B) a fee estate.

(ii) "Undivided fractionalized long-term estate" does not include a joint tenancy.

(hh) "Undue influence" means that a person uses a relationship or position of authority, trust, or confidence:

(i) that is unrelated to a relationship created:

(A) in the ordinary course of making investments regulated under this chapter;

or

(B) by a licensee providing services under this chapter;

(ii) that results in:

(A) an investor perceiving the person as having heightened credibility, personal trustworthiness, or dependability; or

(B) the person having special access to or control of an investor's financial resources, information, or circumstances; and

(iii) to:

(A) exploit the trust, dependence, or fear of the investor;

(B) knowingly assist or cause another to exploit the trust, dependence, or fear of the investor; or

(C) gain control deceptively over the decision making of the investor.

(ii) "Vulnerable adult" means an individual whose age or mental or physical impairment substantially affects that individual's ability to:

(i) manage the individual's resources; or

(ii) comprehend the nature and consequences of making an investment decision.

(jj) "Whole long-term estate" means a person owns or persons through joint tenancy own real property through a fee estate.

(kk) "Working days" means 8 a.m. to 5 p.m., Monday through Friday, exclusive of legal holidays listed in Section 63G-1-301.

(2) A term not defined in this section shall have the meaning as established by division rule. The meaning of a term neither defined in this section nor by rule of the division shall be the meaning commonly accepted in the business community.

(3) (a) This Subsection (3) applies to the offer or sale of a real property estate exempted from the definition of security under Subsection (1)(ee)(ii)(C).

(b) A person who, directly or indirectly receives compensation in connection with the offer or sale as provided in this Subsection (3) of a real property estate is not an agent, broker-dealer, investment adviser, or investment adviser representative under this chapter if that person is licensed under Chapter 2f, Real Estate Licensing and Practices Act, as:

(i) a principal broker;

(ii) an associate broker; or

(iii) a sales agent.

Amended by Chapter 317, 2011 General Session

Amended by Chapter 319, 2011 General Session

Amended by Chapter 354, 2011 General Session

61-1-14. Exemptions.

(1) The following securities are exempt from Sections 61-1-7 and 61-1-15:

(a) a security, including a revenue obligation, issued or guaranteed by the United States, a state, a political subdivision of a state, or an agency or corporate or other instrumentality of one or more of the foregoing, or a certificate of deposit for any of the foregoing;

(b) a security issued or guaranteed by Canada, a Canadian province, a political subdivision of a Canadian province, an agency or corporate or other instrumentality of one or more of the foregoing, or another foreign government with which the United States currently maintains diplomatic relations, if the security is recognized as a valid obligation by the issuer or guarantor;

(c) a security issued by and representing an interest in or a debt of, or guaranteed by, a depository institution organized under the laws of the United States, or a depository institution or trust company supervised under the laws of a state;

(d) a security issued or guaranteed by a public utility or a security regulated in respect of its rates or in its issuance by a governmental authority of the United States, a state, Canada, or a Canadian province;

(e) (i) a federal covered security specified in the Securities Act of 1933, Section 18(b)(1), 15 U.S.C. Section 77r(b)(1), or by rule adopted under that provision;

(ii) a security listed or approved for listing on another securities market specified by rule under this chapter;

(iii) any of the following with respect to a security described in Subsection (1)(e)(i) or (ii):

(A) a put or a call option contract;

(B) a warrant; or

(C) a subscription right on or with respect to the security;

(iv) an option or similar derivative security on a security or an index of securities or foreign currencies issued by a clearing agency that is:

(A) registered under the Securities Exchange Act of 1934; and

(B) listed or designated for trading on a national securities exchange, or a facility of a national securities association registered under the Securities Exchange Act of 1934;

(v) an offer or sale, of the underlying security in connection with the offer, sale, or exercise of an option or other security that was exempt when the option or other security was written or issued; or

(vi) an option or a derivative security designated by the Securities and Exchange Commission under Securities Exchange Act of 1934, Section 9(b), 15 U.S.C. Section 78i(b);

(f) (i) a security issued by a person organized and operated not for private profit but exclusively for religious, educational, benevolent, charitable, fraternal, social, athletic, or reformatory purposes, or as a chamber of commerce or trade or professional

association; and

(ii) a security issued by a corporation organized under Title 3, Chapter 1, General Provisions Relating to Agricultural Cooperative Associations, and a security issued by a corporation to which that chapter is made applicable by compliance with Section 3-1-21;

(g) an investment contract issued in connection with an employees' stock purchase, option, savings, pension, profit-sharing, or similar benefit plan;

(h) a security issued by an investment company that is registered, or that has filed a registration statement, under the Investment Company Act of 1940; and

(i) a security as to which the director, by rule or order, finds that registration is not necessary or appropriate for the protection of investors.

(2) The following transactions are exempt from Sections 61-1-7 and 61-1-15:

(a) an isolated nonissuer transaction, whether effected through a broker-dealer or not;

(b) a nonissuer transaction in an outstanding security, if as provided by rule of the division:

(i) information about the issuer of the security as required by the division is currently listed in a securities manual recognized by the division, and the listing is based upon such information as required by rule of the division; or

(ii) the security has a fixed maturity or a fixed interest or dividend provision and there is no default during the current fiscal year or within the three preceding fiscal years, or during the existence of the issuer and any predecessors if less than three years, in the payment of principal, interest, or dividends on the security;

(c) a nonissuer transaction effected by or through a registered broker-dealer pursuant to an unsolicited order or offer to buy;

(d) a transaction between the issuer or other person on whose behalf the offering is made and an underwriter, or among underwriters;

(e) a transaction in a bond or other evidence of indebtedness secured by a real or chattel mortgage or deed of trust, or by an agreement for the sale of real estate or chattels, if the entire mortgage, deed of trust, or agreement, together with all the bonds or other evidences of indebtedness secured thereby, is offered and sold as a unit;

(f) a transaction by an executor, administrator, sheriff, marshal, receiver, trustee in bankruptcy, guardian, or conservator;

(g) a transaction executed by a bona fide pledgee without a purpose of evading this chapter;

(h) an offer or sale to one of the following whether the purchaser is acting for itself or in a fiduciary capacity:

(i) a depository institution;

(ii) a trust company;

(iii) an insurance company;

(iv) an investment company as defined in the Investment Company Act of 1940;

(v) a pension or profit-sharing trust;

(vi) other financial institution or institutional investor; or

(vii) a broker-dealer;

(i) an offer or sale of a preorganization certificate or subscription if:

(i) no commission or other remuneration is paid or given directly or indirectly for

soliciting a prospective subscriber;

(ii) the number of subscribers acquiring a legal or beneficial interest therein does not exceed 10;

(iii) there is no general advertising or solicitation in connection with the offer or sale; and

(iv) no payment is made by a subscriber;

(j) subject to Subsection (6), a transaction pursuant to an offer by an issuer of its securities to its existing securities holders, if:

(i) no commission or other remuneration, other than a standby commission is paid or given directly or indirectly for soliciting a security holder in this state; and

(ii) the transaction constitutes:

(A) the conversion of convertible securities;

(B) the exercise of nontransferable rights or warrants;

(C) the exercise of transferable rights or warrants if the rights or warrants are exercisable not more than 90 days after their issuance;

(D) the purchase of securities under a preemptive right; or

(E) a transaction other than one specified in Subsections (2)(j)(ii)(A) through (D)

if:

(I) the division is furnished with:

(Aa) a general description of the transaction;

(Bb) the disclosure materials to be furnished to the issuer's securities holders in the transaction; and

(Cc) a non-refundable fee; and

(II) the division does not, by order, deny or revoke the exemption within 20 working days after the day on which the filing required by Subsection (2)(j)(ii)(E)(I) is complete;

(k) an offer, but not a sale, of a security for which a registration statement is filed under both this chapter and the Securities Act of 1933 if no stop order or refusal order is in effect and no public proceeding or examination looking toward such an order is pending;

(l) a distribution of securities as a dividend if the person distributing the dividend is the issuer of the securities distributed;

(m) a nonissuer transaction effected by or through a registered broker-dealer where the broker-dealer or issuer files with the division, and the broker-dealer maintains in the broker-dealer's records, and makes reasonably available upon request to a person expressing an interest in a proposed transaction in the security with the broker-dealer information prescribed by the division under its rules;

(n) a transaction not involving a public offering;

(o) an offer or sale of "condominium units" or "time period units" as those terms are defined in Title 57, Chapter 8, Condominium Ownership Act, whether or not to be sold by installment contract, if the following are complied with:

(i) Title 57, Chapter 8, Condominium Ownership Act, or if the units are located in another state, the condominium act of that state;

(ii) Title 57, Chapter 11, Utah Uniform Land Sales Practices Act;

(iii) Title 57, Chapter 19, Timeshare and Camp Resort Act; and

(iv) Title 70C, Utah Consumer Credit Code;

(p) a transaction or series of transactions involving a merger, consolidation, reorganization, recapitalization, reclassification, or sale of assets, if the consideration for which, in whole or in part, is the issuance of securities of a person or persons, and if:

(i) the transaction or series of transactions is incident to a vote of the securities holders of each person involved or by written consent or resolution of some or all of the securities holders of each person involved;

(ii) the vote, consent, or resolution is given under a provision in:

(A) the applicable corporate statute or other controlling statute;

(B) the controlling articles of incorporation, trust indenture, deed of trust, or partnership agreement; or

(C) the controlling agreement among securities holders;

(iii) (A) one person involved in the transaction is required to file proxy or informational materials under Section 14(a) or (c) of the Securities Exchange Act of 1934 or Section 20 of the Investment Company Act of 1940 and has so filed;

(B) one person involved in the transaction is an insurance company that is exempt from filing under Section 12(g)(2)(G) of the Securities Exchange Act of 1934, and has filed proxy or informational materials with the appropriate regulatory agency or official of its domiciliary state; or

(C) all persons involved in the transaction are exempt from filing under Section 12(g)(1) of the Securities Exchange Act of 1934, and file with the division such proxy or informational material as the division requires by rule;

(iv) the proxy or informational material is filed with the division and distributed to all securities holders entitled to vote in the transaction or series of transactions at least 10 working days prior to any necessary vote by the securities holders or action on any necessary consent or resolution; and

(v) the division does not, by order, deny or revoke the exemption within 10 working days after filing of the proxy or informational materials;

(q) subject to Subsection (7), a transaction pursuant to an offer to sell securities of an issuer if:

(i) the transaction is part of an issue in which there are not more than 15 purchasers in this state, other than those designated in Subsection (2)(h), during any 12 consecutive months;

(ii) no general solicitation or general advertising is used in connection with the offer to sell or sale of the securities;

(iii) no commission or other similar compensation is given, directly or indirectly, to a person other than a broker-dealer or agent licensed under this chapter, for soliciting a prospective purchaser in this state;

(iv) the seller reasonably believes that all the purchasers in this state are purchasing for investment; and

(v) the transaction is part of an aggregate offering that does not exceed \$1,000,000, or a greater amount as prescribed by a division rule, during any 12 consecutive months;

(r) a transaction involving a commodity contract or commodity option;

(s) a transaction in a security, whether or not the security or transaction is otherwise exempt if:

(i) the transaction is:

(A) in exchange for one or more outstanding securities, claims, or property interests; or

(B) partly for cash and partly in exchange for one or more outstanding securities, claims, or property interests; and

(ii) the terms and conditions are approved by the director after a hearing under Section 61-1-11.1;

(t) a transaction incident to a judicially approved reorganization in which a security is issued:

(i) in exchange for one or more outstanding securities, claims, or property interests; or

(ii) partly for cash and partly in exchange for one or more outstanding securities, claims, or property interests;

(u) a nonissuer transaction by a federal covered investment adviser with investments under management in excess of \$100,000,000 acting in the exercise of discretionary authority in a signed record for the account of others; and

(v) a transaction as to which the division finds that registration is not necessary or appropriate for the protection of investors.

(3) A person filing an exemption notice or application shall pay a filing fee as determined under Section 61-1-18.4.

(4) Upon approval by a majority of the commission, the director, by means of an adjudicative proceeding conducted in accordance with Title 63G, Chapter 4, Administrative Procedures Act, may deny or revoke an exemption specified in Subsection (1)(f) or (g) or in Subsection (2) with respect to:

(a) a specific security, transaction, or series of transactions; or

(b) a person or issuer, an affiliate or successor to a person or issuer, or an entity subsequently organized by or on behalf of a person or issuer generally and may impose a fine if the director finds that the order is in the public interest and that:

(i) the application for or notice of exemption filed with the division is incomplete in a material respect or contains a statement which was, in the light of the circumstances under which it was made, false or misleading with respect to a material fact;

(ii) this chapter, or a rule, order, or condition lawfully imposed under this chapter has been willfully violated in connection with the offering or exemption by:

(A) the person filing an application for or notice of exemption;

(B) the issuer, a partner, officer, or director of the issuer, a person occupying a similar status or performing similar functions, or a person directly or indirectly controlling or controlled by the issuer, but only if the person filing the application for or notice of exemption is directly or indirectly controlled by or acting for the issuer; or

(C) an underwriter;

(iii) subject to Subsection (8), the security for which the exemption is sought is the subject of an administrative stop order or similar order, or a permanent or temporary injunction or a court of competent jurisdiction entered under another federal or state act applicable to the offering or exemption;

(iv) the issuer's enterprise or method of business includes or would include activities that are illegal where performed;

(v) the offering has worked, has tended to work, or would operate to work a

fraud upon purchasers;

(vi) the offering is or was made with unreasonable amounts of underwriters' and sellers' discounts, commissions, or other compensation, or promoters' profits or participation, or unreasonable amounts or kinds of options;

(vii) an exemption is sought for a security or transaction that is not eligible for the exemption; or

(viii) the proper filing fee, if required, has not been paid.

(5) (a) An order under Subsection (4) may not operate retroactively.

(b) A person may not be considered to have violated Section 61-1-7 or 61-1-15 by reason of an offer or sale effected after the entry of an order under this Subsection (5) if the person sustains the burden of proof that the person did not know, and in the exercise of reasonable care could not have known, of the order.

(6) The exemption created by Subsection (2)(j) is not available for an offer or sale of a security to an existing securities holder who has acquired the holder's security from the issuer in a transaction in violation of Section 61-1-7.

(7) As to a security, a transaction, or a type of security or transaction, the division may:

(a) withdraw or further condition the exemption described in Subsection (2)(q); or

(b) waive one or more of the conditions described in Subsection (2)(q).

(8) (a) The director may not institute a proceeding against an effective exemption under Subsection (4)(b) more than one year from the day on which the order or injunction on which the director relies is issued.

(b) The director may not enter an order under Subsection (4)(b) on the basis of an order or injunction entered under another state act unless that order or injunction is issued on the basis of facts that would constitute a ground for a stop order under this section at the time the director enters the order.

Amended by Chapter 218, 2010 General Session

61-1-14.5. Burden of proving exemption.

In any proceeding under this chapter, civil, criminal, administrative, or judicial, the burden of proving an exemption under Section 61-1-14 or an exception from a definition under Section 61-1-13 is upon the person claiming the exemption or exception.

Enacted by Chapter 284, 1983 General Session

61-1-15. Filing of sales literature.

The division may by rule or order require the filing of any prospectus, pamphlet, circular, form letter, advertisement, or other sales literature or advertising communication addressed or intended for distribution to prospective investors, including clients or prospective clients of an investment adviser unless the security or transaction is exempted by Section 61-1-14 or is a federal covered security.

Amended by Chapter 160, 1997 General Session

61-1-15.5. Federal covered securities.

(1) The division by rule or order may require the filing of any of the following documents with respect to a covered security under Section 18(b)(2) of the Securities Act of 1933:

(a) prior to the initial offer of federal covered security in this state, a notice form as prescribed by the division or all documents that are part of a federal registration statement filed with the Securities and Exchange Commission under the Securities Act of 1933, together with a consent to service of process signed by the issuer and a filing fee as determined under Section 61-1-18.4;

(b) after the initial offer of such federal covered security in this state, all documents that are part of an amendment to a federal registration statement filed with the U.S. Securities and Exchange Commission under the Securities Act of 1933, which shall be filed concurrently with the division;

(c) a report of the value of federal covered securities offered or sold in this state, together with a filing fee as determined under Section 61-1-18.4; and

(d) a notice filing under this section shall be effective for one year and shall be renewed annually in order to continue to offer or sell the federal covered securities for which the notice was filed.

(2) With respect to a security that is a covered security under Section 18(b)(4)(D) of the Securities Act of 1933, the division by rule or order may require the issuer to file a notice on SEC Form D and a consent to service of process signed by the issuer no later than 15 days after the first sale of such covered security in this state, together with a filing fee as determined under Section 61-1-18.4.

(3) The division by rule or order may require the filing of a document filed with the Securities and Exchange Commission under the Securities Act of 1933, with respect to a covered security under Securities Act of 1933, Section 18(b)(3) or (4), together with a filing fee as determined under Section 61-1-18.4.

(4) Upon approval by a majority of the commission, the director, by means of an adjudicative proceeding conducted in accordance with Title 63G, Chapter 4, Administrative Procedures Act, may issue a stop order suspending the offer and sale of a federal covered security, except a covered security under Section 18(b)(1) of the Securities Act of 1933, if the director finds that the order is in the public interest and there is a failure to comply with any condition established under this section.

(5) The division by rule or order may waive any or all of the provisions of this section.

Amended by Chapter 351, 2009 General Session

61-1-16. False statements unlawful.

It is unlawful for any person to make or cause to be made, in any document filed with the division or in any proceeding under this chapter, any statement which is, at the time and in the light of the circumstances under which it is made, false or misleading in any material respect.

Amended by Chapter 284, 1983 General Session

61-1-17. No finding by division on merits -- Contrary representation unlawful.

(1) Neither the fact that an application for registration or a registration statement has been filed nor the fact that a person or security is effectively registered constitutes a finding by the division that any document filed under this chapter is true, complete, and not misleading. Neither any such fact nor the fact that an exemption or exception is available for a security or a transaction means that the division has passed in any way upon the merits or qualifications of, or recommended or given approval to, any person, security, or transaction.

(2) It is unlawful to make, or cause to be made, to any prospective purchaser, customer, or client any representation inconsistent with Subsection (1).

Amended by Chapter 284, 1983 General Session

61-1-18. Division of Securities established -- Director -- Investigators.

(1) (a) There is established within the Department of Commerce a Division of Securities.

(b) The division is under the direction and control of a director. The executive director shall appoint the director with the governor's approval.

(c) Subject to Section 61-1-18.5, the division shall administer and enforce this chapter.

(d) The director shall hold office at the pleasure of the governor.

(2) The director, with the approval of the executive director, may employ the staff necessary to discharge the duties of the division or commission at salaries to be fixed by the director according to standards established by the Department of Human Resource Management.

(3) An investigator employed pursuant to Subsection (2) who meets the training requirements of Subsection 53-13-105(3) may be designated a special function officer, as defined in Section 53-13-105, by the director, but is not eligible for retirement benefits under the Public Safety Employee's Retirement System.

Amended by Chapter 351, 2009 General Session

61-1-18.1. Technical experts and specialists -- Employment -- Contracts.

The director may employ or contract with technical experts and specialists including but not limited to certified public accountants, appraisers, engineers, and tax accountants to conduct or participate in any examination, audit, investigation or proceeding.

Enacted by Chapter 284, 1983 General Session

61-1-18.2. Budget -- Annual report.

The director shall annually prepare and submit to the executive director:

(1) a budget for the expenses of the division and commission for the administration and enforcement of this chapter for the next fiscal year; and

(2) a report outlining the division's and commission's work for the preceding

fiscal year.

Amended by Chapter 351, 2009 General Session

61-1-18.3. Information obtained by division or commission -- Use for personal benefit prohibited -- Disclosure.

(1) It is unlawful for an employee of the division or a member of the commission to use for personal benefit any non-public information that is filed with or obtained by the division or commission.

(2) This chapter does not authorize the division, an employee of the division, the commission, or a member of the commission to disclose information described in Subsection (1), except among themselves or when necessary or appropriate in a proceeding or investigation under this chapter.

(3) No provision of this chapter either creates or derogates from a privilege that exists at common law or otherwise when documentary or other evidence is sought under subpoena directed to:

- (a) the division;
- (b) the commission;
- (c) a member of the commission; or
- (d) an employee of the division.

Amended by Chapter 351, 2009 General Session

61-1-18.4. Fees collected by division.

The Division of Securities shall establish, charge, and collect fees pursuant to Section 63J-1-504, except when it can be demonstrated that the fee amount should be based on factors other than cost, for the following:

(1) the fair and reasonable cost of any examination, audit, or investigation authorized or required by this chapter or other state law;

(2) certificate of serving and mailing process served upon the division in any action or proceeding commenced or prosecuted in this state against any person who has appointed the division its agent as provided in Subsection 61-1-26(7); and

(3) copies and authentication of all papers, publications, data, and other records available to the public or issued under the division's authority.

Amended by Chapter 183, 2009 General Session

61-1-18.5. Securities Commission -- Transition.

(1) (a) There is created a Securities Commission.

(b) The division shall provide staffing to the commission.

(2) (a) The commission shall:

(i) formulate and make recommendations to the director regarding policy and budgetary matters;

(ii) submit recommendations regarding registration requirements;

(iii) formulate and make recommendations to the director regarding the establishment of reasonable fees;

(iv) act in an advisory capacity to the director with respect to the exercise of the director's duties, powers, and responsibilities;

(v) conduct an administrative hearing under this chapter that is not:

(A) delegated by the commission to an administrative law judge or the division relating to a violation of this chapter; or

(B) expressly delegated to the division under this chapter;

(vi) except as provided in Subsection (2)(b), and consistent with Section 61-1-20, impose a sanction as provided in this chapter;

(vii) review rules made by the division for purposes of concurrence in accordance with Section 61-1-24; and

(viii) perform other duties as this chapter provides.

(b) (i) The commission may delegate to the division the authority to impose a sanction under this chapter.

(ii) If under Subsection (2)(b)(i) the commission delegates to the division the authority to impose a sanction, a person who is subject to the sanction may petition the commission for review of the sanction.

(iii) A person who is sanctioned by the division in accordance with this Subsection (2)(b) may seek agency review by the executive director only after the commission reviews the division's action.

(3) (a) The governor shall appoint five members to the commission with the consent of the Senate as follows:

(i) two members from the securities brokerage community:

(A) who are not from the same broker-dealer or affiliate; and

(B) who have at least five years prior experience in securities matters;

(ii) one member from the securities section of the Utah State Bar:

(A) whose practice primarily involves:

(I) corporate securities; or

(II) representation of plaintiffs in securities cases;

(B) who does not routinely represent clients involved in:

(I) civil or administrative litigation with the division; or

(II) criminal cases brought under this chapter; and

(C) who has at least five years prior experience in securities matters;

(iii) one member who is an officer or director of a business entity not subject to the reporting requirements of Section 13 or 15(d) of the Securities Exchange Act of 1934; and

(iv) one member from the public at large who has no active participation in the securities business.

(b) A member may not serve more than two consecutive terms.

(4) (a) Except as required by Subsection (4)(b) and subject to Subsection (4)(c), as terms of current members expire, the governor shall appoint a new member or reappointed member to a four-year term.

(b) Notwithstanding Subsection (4)(a), the governor shall, at the time of appointment or reappointment, adjust the length of terms to ensure that the terms of commission members are staggered so that approximately half of the commission is appointed every two years.

(c) For purposes of making an appointment to the commission, the governor:

- (i) shall as of May 12, 2009:
 - (A) appoint all five members of the commission; and
 - (B) stagger the terms of the five members of the commission to comply with Subsection (4)(b); and
- (ii) may not consider the commission an extension of the previous Securities Advisory Board.
- (d) When a vacancy occurs in the membership for any reason, the governor shall appoint a replacement member for the unexpired term.
- (e) A member shall serve until the member's respective successor is appointed and qualified.
- (f) The commission shall annually select one member to serve as chair of the commission.
- (5) (a) The commission shall meet:
 - (i) at least quarterly on a regular date to be fixed by the commission; and
 - (ii) at such other times at the call of:
 - (A) the director; or
 - (B) any two members of the commission.
- (b) A majority of the commission shall constitute a quorum for the transaction of business.
- (c) An action of the commission requires a vote of a majority of members present.
- (6) A member of the commission shall, by sworn and written statement filed with the Department of Commerce and the lieutenant governor, disclose any position of employment or ownership interest that the member has with respect to an entity or business subject to the jurisdiction of the division or commission. This statement shall be filed upon appointment and must be appropriately amended whenever significant changes occur in matters covered by the statement.
- (7) A member may not receive compensation or benefits for the member's service, but may receive per diem and travel expenses in accordance with:
 - (a) Section 63A-3-106;
 - (b) Section 63A-3-107; and
 - (c) rules made by the Division of Finance pursuant to Sections 63A-3-106 and 63A-3-107.
- (8) (a) A rule or form made by the division under this section that is in effect on May 11, 2009, is considered to have been concurred with by the commission as of May 12, 2009, until the commission acts on the rule or form.
- (b) For a civil or administrative action pending under this chapter as of May 12, 2009, brought under the authority of division under this chapter as in effect May 11, 2009, that may be brought only by the commission under this chapter as in effect on May 12, 2009:
 - (i) the action shall be considered brought by the commission; and
 - (ii) the commission may take any act authorized under this chapter regarding that action.

Amended by Chapter 319, 2011 General Session

61-1-18.6. Procedures -- Adjudicative proceedings.

The commission and division shall comply with the procedures and requirements of Title 63G, Chapter 4, Administrative Procedures Act, in an adjudicative proceeding under this chapter.

Amended by Chapter 351, 2009 General Session

61-1-18.7. Funding of securities investor education, training, and enforcement.

(1) (a) There is created an expendable special revenue fund known as the "Securities Investor Education, Training, and Enforcement Fund" to provide revenue for the purposes stated in this section.

(b) For purposes of this section, "fund" means the Securities Investor Education, Training, and Enforcement Fund.

(2) Money received by the state by reason of civil penalties ordered and administrative fines collected pursuant to this chapter shall be deposited in the fund, and is subject to the requirements of Title 51, Chapter 5, Funds Consolidation Act.

(3) A fine collected by the division after July 1, 1989, pursuant to a voluntary settlement or administrative order shall be deposited into the fund.

(4) (a) The fund shall earn interest.

(b) Interest earned on fund money shall be deposited into the fund.

(5) Notwithstanding Title 63J, Chapter 1, Budgetary Procedures Act, the director may use money in the fund, upon concurrence of the commission and the executive director of the Department of Commerce, in a manner consistent with the duties of the division and commission under this chapter and only for any or all of the following and the expense of providing them:

(a) education and training of Utah residents in matters concerning securities laws and investment decisions, by publications or presentations;

(b) education of registrants and licensees under this chapter, by:

(i) publication of this chapter and rules and policy statements and opinion letters issued under this chapter; and

(ii) sponsorship of seminars or meetings to educate registrants and licensees as to the requirements of this chapter;

(c) investigation and litigation; and

(d) to pay an award to a reporter as provided in Part 1, Securities Fraud Reporting Program Act.

(6) If the balance in the fund exceeds \$500,000 at the close of any fiscal year, the excess shall be transferred to the General Fund.

Amended by Chapter 400, 2013 General Session

61-1-19. Investigations authorized.

(1) (a) The division may make any public or private investigations within or without this state as the division considers necessary to determine whether a person has violated, is violating, or is about to violate this chapter or a rule or order issued under this chapter.

(b) To aid in the enforcement of this chapter or in the prescribing of rules and forms issued under this chapter, the division may require or permit a person to file a statement in writing, under oath or otherwise as to all the facts and circumstances concerning the matter to be investigated.

(c) The division may publish information concerning a violation of this chapter or the violation of a rule or order issued under this chapter.

(2) For the purpose of an investigation or proceeding under this chapter, the division, the commission, or an employee designated by the division may:

(a) administer an oath or affirmation;

(b) subpoena a witness and compel the attendance of the witness;

(c) take evidence; and

(d) require the production of any books, papers, correspondence, memoranda, agreements, or other documents or records relevant or material to the investigation.

Amended by Chapter 351, 2009 General Session

61-1-20. Enforcement.

(1) Whenever it appears to the director that a person has engaged, is engaging, or is about to engage in an act or practice constituting a violation of this chapter or a rule or order under this chapter, in addition to specific powers granted in this chapter:

(a) the director may issue an order directing the person to appear before the commission and show cause why an order should not be issued directing the person to cease and desist from engaging in the act or practice, or doing an act in furtherance of the activity;

(b) the order to show cause shall state the reasons for the order and the date of the hearing;

(c) the director shall promptly serve a copy of the order to show cause upon a person named in the order;

(d) the commission shall hold a hearing on the order to show cause no sooner than 10 business days after the order is issued;

(e) after a hearing, the commission may issue an order to cease and desist from engaging in an act or practice constituting a violation of this chapter or a rule or order under this chapter;

(f) the commission may impose a fine;

(g) the commission may bar or suspend that person from associating with a licensed broker-dealer or investment adviser in this state; and

(h) the commission may impose a combination of sanctions in Subsections (1)(e) through (g).

(2) (a) The director may bring an action in the appropriate district court of this state or the appropriate court of another state to enjoin an act or practice and to enforce compliance with this chapter or a rule or order under this chapter.

(b) Upon a proper showing in an action brought under this section, the court may:

(i) issue a permanent or temporary, prohibitory or mandatory injunction;

(ii) issue a restraining order or writ of mandamus;

(iii) enter a declaratory judgment;

(iv) appoint a receiver or conservator for the defendant or the defendant's assets;

(v) order disgorgement;

(vi) order rescission;

(vii) order restitution;

(viii) impose a fine of not more than \$10,000 for each violation of the chapter;

and

(ix) enter any other relief the court considers just.

(c) The court may not require the division to post a bond in an action brought under this Subsection (2).

(3) An order issued under Subsection (1) shall be accompanied by written findings of fact and conclusions of law.

(4) When determining the severity of a sanction to be imposed under this section, the commission or court shall consider whether:

(a) the person against whom the sanction is to be imposed exercised undue influence; or

(b) the person against whom the sanction is imposed under this section knows or should know that an investor in the investment that is the grounds for the sanction is a vulnerable adult.

Amended by Chapter 319, 2011 General Session

61-1-21. Penalties for violations.

(1) A person is guilty of a third degree felony who willfully violates:

(a) a provision of this chapter except Sections 61-1-1 and 61-1-16;

(b) an order issued under this chapter; or

(c) Section 61-1-16 knowing the statement made is false or misleading in a material respect.

(2) Subject to the other provisions of this section, a person who willfully violates Section 61-1-1:

(a) is guilty of a third degree felony if, at the time the crime was committed, the property, money, or thing unlawfully obtained or sought to be obtained was worth less than \$10,000; or

(b) is guilty of a second degree felony if, at the time the crime was committed, the property, money, or thing unlawfully obtained or sought to be obtained was worth \$10,000 or more.

(3) A person who willfully violates Section 61-1-1 is guilty of a second degree felony if:

(a) at the time the crime was committed, the property, money, or thing unlawfully obtained or sought to be obtained was worth less than \$10,000; and

(b) in connection with that violation, the violator knowingly accepted any money representing:

(i) equity in a person's primary residence;

(ii) a withdrawal from an individual retirement account;

(iii) a withdrawal from a qualified retirement plan as defined in the Internal Revenue Code;

- (iv) an investment by a person over whom the violator exercises undue influence; or
- (v) an investment by a person that the violator knows is a vulnerable adult.
- (4) A person who willfully violates Section 61-1-1 is guilty of a second degree felony punishable by imprisonment for an indeterminate term of not less than three years or more than 15 years if:
 - (a) at the time the crime was committed, the property, money, or thing unlawfully obtained or sought to be obtained was worth \$10,000 or more; and
 - (b) in connection with that violation, the violator knowingly accepted any money representing:
 - (i) equity in a person's primary residence;
 - (ii) a withdrawal from an individual retirement account;
 - (iii) a withdrawal from a qualified retirement plan as defined in the Internal Revenue Code;
 - (iv) an investment by a person over whom the violator exercises undue influence; or
 - (v) an investment by a person that the violator knows is a vulnerable adult.
- (5) It is an affirmative defense under this section against a claim that the person violated an order issued under this chapter for the person to prove that the person had no knowledge of the order.
- (6) In addition to any other penalty for a criminal violation of this chapter, the sentencing judge may impose a penalty or remedy provided for in Subsection 61-1-20(2)(b).

Amended by Chapter 319, 2011 General Session

61-1-21.1. Limitation of prosecutions.

- (1) No indictment or information may be returned or civil complaint filed under this chapter more than five years after the alleged violation.
- (2) As to causes of action arising from violations of this chapter, the limitation of prosecutions provided in this section supersedes the limitation of actions provided in Section 76-1-302 and Title 78B, Chapter 2, Statutes of Limitations.

Amended by Chapter 3, 2008 General Session

61-1-21.5. Legal counsel -- Prosecutions.

- (1) The attorney general shall advise and represent the division, the commission, and the staff of the division in all civil matters, administrative or judicial, requiring legal counsel or services in:
 - (a) the exercise or defense of the division's or commission's power; or
 - (b) the performance of the division's or commission's duties.
- (2) With the concurrence of the attorney general, the staff of the division may represent the division in hearings conducted during the course of adjudicative proceedings of the commission or the division.
- (3) (a) In the prosecution of all criminal actions under this chapter, the attorney general, county attorney, or district attorney of the appropriate jurisdiction, shall provide

all legal services for the division, the commission, and the staff of the division.

(b) The division or commission may refer evidence that is available concerning a violation of this chapter for criminal prosecution to:

- (i) the attorney general; or
- (ii) the appropriate county attorney, district attorney, or United States Attorney's Office.

(4) The attorney general, a county attorney, or a district attorney of the appropriate jurisdiction may institute a criminal proceeding under this chapter, with or without referral from the division.

Amended by Chapter 351, 2009 General Session

61-1-22. Sales and purchases in violation -- Remedies -- Limitation of actions.

- (1) (a) This Subsection (1) applies to a person who:
- (i) offers or sells a security in violation of:
 - (A) Subsection 61-1-3(1);
 - (B) Section 61-1-7;
 - (C) Subsection 61-1-17(2);
 - (D) a rule or order under Section 61-1-15, which requires the affirmative approval of sales literature before it is used; or
 - (E) a condition imposed under Subsection 61-1-10(4) or 61-1-11(7); or
 - (ii) offers, sells, or purchases a security in violation of Subsection 61-1-1(2).
- (b) A person described in Subsection (1)(a) is liable to a person selling the security to or buying the security from the person described in Subsection (1)(a). The person to whom the person described in Subsection (1)(a) is liable may sue either at law or in equity to recover the consideration paid for the security, together with interest at 12% per year from the date of payment, costs, and reasonable attorney fees, less the amount of income received on the security, upon the tender of the security or for damages if the person no longer owns the security.
- (c) Damages are an amount calculated as follows:
- (i) subtract from the amount that would be recoverable upon a tender under Subsection (7)(b) the value of the security when the buyer disposed of the security; and
 - (ii) add to the amount calculated under Subsection (1)(c)(i) interest at:
 - (A) 12% per year:
 - (I) beginning the day on which the security is purchased by the buyer; and
 - (II) ending on the date of disposition; and
 - (B) after the period described in Subsection (1)(c)(ii)(A), 12% per year on the amount lost at disposition.
- (2) The court in a suit brought under Subsection (1) may award an amount equal to three times the consideration paid for the security, together with interest, costs, and attorney fees, less any amounts, all as specified in Subsection (1) upon a showing that:
- (a) the violation was reckless or intentional; or
 - (b) the violation was of Subsection 61-1-1(2), was negligent, and it is demonstrated by clear and convincing evidence that the violation involved an investment by a person over whom the violator exercised undue influence.

(3) A person who offers or sells a security in violation of Subsection 61-1-1(2) is not liable under Subsection (1)(a) if the purchaser knew of the untruth or omission, or the seller did not know and in the exercise of reasonable care could not have known of the untrue statement or misleading omission.

(4) (a) Every person who directly or indirectly controls a seller or buyer liable under Subsection (1), every partner, officer, or director of such a seller or buyer, every person occupying a similar status or performing similar functions, every employee of such a seller or buyer who materially aids in the sale or purchase, and every broker-dealer or agent who materially aids in the sale or purchase are also liable jointly and severally with and to the same extent as the seller or purchaser, unless the nonseller or nonpurchaser who is so liable sustains the burden of proof that the nonseller or nonpurchaser did not know, and in exercise of reasonable care could not have known, of the existence of the facts by reason of which the liability is alleged to exist.

(b) There is contribution as in cases of contract among the several persons so liable.

(5) A tender specified in this section may be made at any time before entry of judgment.

(6) A cause of action under this section survives the death of a person who might have been a plaintiff or defendant.

(7) (a) An action may not be maintained to enforce liability under this section unless brought before the earlier of:

(i) the expiration of five years after the act or transaction constituting the violation; or

(ii) the expiration of two years after the discovery by the plaintiff of the facts constituting the violation.

(b) A person may not sue under this section if:

(i) the buyer or seller received a written offer, before suit and at a time when the buyer or seller owned the security, to refund the consideration paid together with interest at 12% per year from the date of payment, less the amount of any income received on the security, and the buyer or seller failed to accept the offer within 30 days of its receipt; or

(ii) the buyer or seller received such an offer before suit and at a time when the buyer or seller did not own the security, unless the buyer or seller rejected the offer in writing within 30 days of its receipt.

(8) A person who has made or engaged in the performance of any contract in violation of this chapter or any rule or order issued under this chapter, or who has acquired a purported right under any such contract with knowledge of the facts by reason of which its making or performance was in violation, may not base a suit on the contract.

(9) A condition, stipulation, or provision binding a person acquiring a security to waive compliance with this chapter or a rule or order issued under this chapter is void.

(10) (a) The rights and remedies provided by this chapter are in addition to any other rights or remedies that may exist at law or in equity.

(b) This chapter does not create a cause of action not specified in this section or Subsection 61-1-4(6).

Amended by Chapter 191, 2012 General Session

61-1-23. Review of orders.

A person aggrieved by a final order under this chapter determining all of the issues of an adjudicative proceeding may obtain review of the order by the executive director in accordance with Title 63G, Chapter 4, Administrative Procedures Act.

Amended by Chapter 351, 2009 General Session

61-1-24. Rules, forms, and orders.

(1) (a) Subject to Subsection (1)(c), the division may make, amend, or rescind a rule, form, or order when necessary to carry out this chapter.

(b) For the purpose of a rule or form, the division may:

(i) classify securities, persons, and matters within the jurisdiction of the commission or division; and

(ii) prescribe different requirements for different classes.

(c) The division shall make rules in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, except that the division may not make, amend, or rescind a rule or form under this chapter without the concurrence of the commission.

(d) In prescribing a rule or form, the division may cooperate with the securities administrators of the other states and the Securities and Exchange Commission to achieve maximum uniformity in the form and content of registration statements, applications, and reports wherever practicable.

(2) (a) The division may prescribe:

(i) the form and content of a financial statement required under this chapter;

(ii) the circumstances under which a consolidated financial statement shall be filed; and

(iii) whether or not a required financial statement shall be certified by an independent public accountant.

(b) A financial statement under this chapter shall be prepared in accordance with generally accepted accounting principles.

(3) A provision of this chapter that imposes liability does not apply to an act done or omitted in good faith in conformity with a rule, form, or order of the division or an order of the commission, notwithstanding that the rule, form, or order may later be amended or rescinded or be determined by judicial or other authority to be invalid for any reason.

Amended by Chapter 347, 2009 General Session

Amended by Chapter 351, 2009 General Session

61-1-25. Record of registrations.

(1) (a) A document is filed when it is received by the division.

(b) If the last day prescribed for the filing of a document is a Saturday, Sunday, or legal holiday, the document is considered timely filed if it is filed on the next succeeding day that is not a Saturday, Sunday, or legal holiday.

- (2) (a) The division shall keep a register of:
- (i) all applications for registration and registration statements that are or have ever been effective under this chapter; and
 - (ii) all denial, suspension, or revocation orders entered under this chapter.
- (b) The register shall be open for public inspection.
- (3) The information contained in or filed with a registration statement, application, or report may be made available to the public under the rules the division prescribes.
- (4) (a) The division shall furnish to a person a photostatic or other copy, certified under seal if requested, of an entry in the register or any document that is a matter of public record:
- (i) upon request; and
 - (ii) at a reasonable charge prescribed by the division.
- (b) In a proceeding or prosecution under this chapter, a copy certified under this Subsection (4) is prima facie evidence of the contents of the entry or document certified.
- (5) The division may issue an interpretative opinion requested by an interested person if the commission concurs in the interpretative opinion.

Amended by Chapter 317, 2011 General Session

61-1-26. Scope of the act -- Service of process.

- (1) Section 61-1-1, Subsection 61-1-3(1), Sections 61-1-7, 61-1-15.5, 61-1-17, and 61-1-22 apply to persons who sell or offer to sell when:
- (a) an offer to sell is made in this state; or
 - (b) an offer to buy is made and accepted in this state.
- (2) Section 61-1-1, Subsection 61-1-3(1), and Section 61-1-17 apply to persons who buy or offer to buy when:
- (a) an offer to buy is made in this state; or
 - (b) an offer to sell is made and accepted in this state.
- (3) For the purposes of this section, an offer to sell or to buy is made in this state whether or not either party is then present in this state, when the offer:
- (a) originates from this state; or
 - (b) is directed by the offeror to this state and received at the place to which it is directed, or at any post office in this state in the case of a mailed offer.
- (4) For the purposes of this section, an offer to sell or to buy is accepted in this state when acceptance:
- (a) is communicated to the offeror in this state; and
 - (b) has not previously been communicated to the offeror, orally or in writing, outside this state, and acceptance is communicated to the offeror in this state, whether or not either party is then present in this state, when the offeree directs it to the offeror in this state reasonably believing the offeror to be in this state and it is received at the place to which it is directed or at any post office in this state in the case of a mailed acceptance.
- (5) An offer to sell or to buy is not made in this state when:
- (a) the publisher circulates or there is circulated on his behalf in this state any

bona fide newspaper or other publication of general, regular, and paid circulation which is not published in this state, or which is published in this state but has had more than 2/3 of its circulation outside this state during the past 12 months; or

(b) a radio or television program originating outside this state is received in this state.

(6) Section 61-1-2 and Subsection 61-1-3(3), as well as Section 61-1-17 so far as investment advisers are concerned, apply when any act instrumental in effecting prohibited conduct is done in this state, whether or not either party is then present in this state.

(7) (a) Every application for registration under this chapter and every issuer which proposes to offer a security in this state through any person acting on an agency basis in the common-law sense shall file with the division, in such form as it prescribes by rule, an irrevocable consent appointing the division or the director to be his attorney to receive service of any lawful process in any noncriminal suit, action, or proceeding against him or his successor, executor, or administrator which arises under this chapter or any rule or order hereunder after the consent has been filed, with the same force and validity as if served personally on the person filing the consent.

(b) A person who has filed such a consent in connection with a previous registration or notice filing need not file another.

(c) Service may be made by leaving a copy of the process in the office of the division, but it is not effective unless the plaintiff, who may be the division in a suit, action, or proceeding instituted by it, sends notice of the service and a copy of the process by registered mail to the defendant or respondent at his last address on file with the division, and the plaintiff's affidavit of compliance with this subsection is filed in the case on or before the return day of the process, if any, or within such further time as the court allows.

(8) (a) When any person, including any nonresident of this state, engages in conduct prohibited or made actionable by this chapter or any rule or order hereunder, and he has not filed a consent to service of process under Subsection (7) and personal jurisdiction over him cannot otherwise be obtained in this state, that conduct shall be considered equivalent to his appointment of the division or the director to be his attorney to receive service of any lawful process in any noncriminal suit, action, or proceeding against him or his successor executor or administrator which grows out of that conduct and which is brought under this chapter or any rule or order hereunder, with the same force and validity as if served on him personally.

(b) Service may be made by leaving a copy of the process in the office of the division, but it is not effective unless the plaintiff, who may be the division in a suit, action, or proceeding instituted by it, sends notice of the service and a copy of the process by registered mail to the defendant or respondent at his last-known address or takes other steps which are reasonably calculated to give actual notice, and the plaintiff's affidavit of compliance with this subsection is filed in the case on or before the return day of the process, if any, or within such further time as the court allows.

(9) When process is served under this section, the court, or the director shall order such continuance as may be necessary to afford the defendant or respondent reasonable opportunity to defend.

Amended by Chapter 160, 1997 General Session

61-1-27. Construction of chapter.

This chapter may be so construed as to effectuate its general purpose to make uniform the law of those states which enact it and to coordinate the interpretation and administration of this chapter with the related federal regulation.

Amended by Chapter 284, 1983 General Session

61-1-28. Citation of chapter.

This chapter may be cited as the Utah Uniform Securities Act.

Amended by Chapter 284, 1983 General Session

61-1-29. Savings clause.

If any provision of this chapter or its application to any person or circumstance is held invalid, the invalidity shall not affect other provisions or applications of the chapter which can be given effect without the invalid provision or application.

Amended by Chapter 284, 1983 General Session

61-1-101. Title.

This part is known as the "Securities Fraud Reporting Program Act."

Enacted by Chapter 318, 2011 General Session

61-1-102. Definitions.

As used in this part:

- (1) "Adverse action" means to:
 - (a) discharge, threaten, or directly or indirectly harass an employee; or
 - (b) otherwise discriminate against an employee in any manner that affects the employee's employment, including:
 - (i) compensation;
 - (ii) terms;
 - (iii) conditions;
 - (iv) location;
 - (v) rights;
 - (vi) immunities;
 - (vii) promotions; or
 - (viii) privileges.
- (2) "Covered judicial or administrative action" means a judicial or administrative action brought under this chapter that results in a monetary sanction exceeding \$50,000.
- (3) "Employee" means an individual who performs a service for wages or other remuneration under a contract of hire, written or oral, express or implied.
- (4) "Fund" means the Securities Investor Education, Training, and Enforcement

Fund created in Section 61-1-18.7.

- (5) "Original information" means information that is:
 - (a) derived from the independent knowledge or analysis of an individual;
 - (b) not known to the division or commission from a source other than the individual; and
 - (c) unless the individual is the source of the information, not exclusively derived from:
 - (i) an allegation made in a judicial or administrative hearing;
 - (ii) a government report, hearing, audit, or investigation; or
 - (iii) the media.
- (6) "Monetary sanction" means money required to be paid under this chapter as the result of a judicial or administrative action, including a penalty or disgorgement.
- (7) "Reporter" means an individual who provides original information relating to a violation in accordance with Section 61-1-103.

Enacted by Chapter 318, 2011 General Session

61-1-103. Procedure for disclosure.

- (1) To be a reporter for purposes of this part, the individual shall:
 - (a) provide original information to the division or commission;
 - (b) reasonably believe that the act that is disclosed by the original information is a violation of this chapter; and
 - (c) provide the original information to the division or commission:
 - (i) in writing; and
 - (ii) in accordance with the procedures established by rule made by the division in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act.
- (2) (a) Notwithstanding Title 63G, Chapter 2, Government Records Access and Management Act, and except as provided in Subsection (2)(b), the division, commission, or an employee of the division may not disclose information that could reasonably be expected to reveal the identity of a reporter.
- (b) This Subsection (2) is not intended to limit, and may not be construed to limit, the ability of the attorney general or division to present evidence to a grand jury or to share evidence with potential witnesses or defendants in the course of an ongoing criminal investigation.

Enacted by Chapter 318, 2011 General Session

61-1-104. Reporter protected from adverse action -- Exceptions.

- (1) An employer may not take adverse action against an employee who is a reporter because of a lawful act of the employee, or a person authorized to act on behalf of the employee, to:
 - (a) provide original information to the division or commission in accordance with Section 61-1-103;
 - (b) initiate, testify in, or assist in any investigation, judicial action, or administrative action based on or related to original information provided to the division or commission;

- (c) disclose information required or protected under:
 - (i) Sarbanes-Oxley Act of 2002, 15 U.S.C. Sec. 7201 et seq.;
 - (ii) Securities Exchange Act of 1934, 15 U.S.C. Sec. 78a et seq.;
 - (iii) 18 U.S.C. Sec. 1513(e);
 - (iv) a regulation issued by the Securities Exchange Commission; or
 - (v) this chapter or a rule made under this chapter.
- (2) Notwithstanding Subsection (1), an employee is not protected under this section if:
 - (a) the employee knowingly or recklessly makes a false, fictitious, or fraudulent statement or misrepresentation;
 - (b) the employee uses a false writing or document knowing that, or with reckless disregard as to whether, the writing or document contains false, fictitious, or fraudulent information;
 - (c) the employee knows that, or has a reckless disregard as to whether, the disclosure is of original information that is false or frivolous; or
 - (d) the employee is protected from adverse action as described in Section 21F of the Securities Exchange Act, 15 U.S.C. Sec. 78u-6, and regulations issued under that section.

Amended by Chapter 366, 2012 General Session

61-1-105. Remedies for employee bringing action.

- (1) As used in this section, "actual damages" means damages for injury or loss caused by a violation of Section 61-1-104.
- (2) (a) An employee who alleges a violation of Section 61-1-104 may bring a civil action for injunctive relief, actual damages, or both.
 - (b) An employee may not bring a civil action under this section more than:
 - (i) four years after the day on which the violation of Section 61-1-104 occurs; or
 - (ii) two years after the date when facts material to the right of action are known or reasonably should be known by the employee alleging a violation of Section 61-1-104.
- (3) An employee may bring an action under this section in the district court for the county where:
 - (a) the alleged violation occurs;
 - (b) the employee resides; or
 - (c) the person against whom the civil complaint is filed resides or has a principal place of business.
- (4) To prevail in an action brought under this section, an employee shall establish, by a preponderance of the evidence, that the employee has suffered an adverse action because the employee, or a person acting on the employee's behalf, engaged or intended to engage in an activity protected under Section 61-1-104.
- (5) A court may award as relief for an employee prevailing in an action brought under this section:
 - (a) reinstatement with the same fringe benefits and seniority status that the individual would have had, but for the adverse action;
 - (b) two times the amount of back pay otherwise owed to the individual, with

interest;

(c) compensation for litigation costs, expert witness fees, and reasonable attorney fees;

(d) actual damages; or

(e) any combination of the remedies listed in this Subsection (5).

(6) (a) An employer may file a counter claim against an employee who files a civil action under this section seeking attorney fees and costs incurred by the employer related to the action filed by the employee and the counter claim.

(b) The court may award an employer who files a counter claim under this Subsection (6) attorney fees and costs if the court finds that:

(i) there is no reasonable basis for the civil action filed by the employee; or

(ii) the employee is not protected under Section 61-1-104 because:

(A) the employee engaged in an act described in Subsections 61-1-104(2)(a) through (c); or

(B) Subsection 61-1-104(2)(d) applies.

Enacted by Chapter 318, 2011 General Session

61-1-106. Award for reporter.

(1) Subject to Section 61-1-108 and the other provisions of this section, the commission may award an award to one or more reporters who voluntarily provide original information to the commission or division that leads to the successful enforcement of a covered judicial or administrative action.

(2) The division shall pay an award under this section from the fund.

(3) (a) Subject to the other provisions of this section, the commission may determine the amount of award paid under this section, except that in determining the amount the commission shall consider:

(i) the significance of the original information provided by the reporter to the success of the covered judicial or administrative action;

(ii) the degree of assistance provided by the reporter in relation to the covered judicial or administrative action;

(iii) any costs of legal representation for the reporter in relation to the covered judicial or administrative action;

(iv) the programmatic interest of the commission in deterring a violation of this chapter by making an award to a reporter who provides original information that leads to the successful enforcement of this chapter;

(v) whether, and the extent to which, the reporter or a legal representative of the reporter participated in internal compliance systems, including:

(A) whether, and the extent to which, the reporter reported the possible securities violation through internal reporting, legal, or compliance procedures before, or at the same time as reporting the securities violation to the division or commission; and

(B) whether, and the extent to which, the reporter assisted an internal investigation or inquiry concerning the reported securities violation; and

(vi) any other relevant factor that the division may establish by rule.

(b) The aggregate amount of awards that the commission may award for a

specific covered judicial or administrative action may not exceed:

- (i) the balance in the fund as of the date the awards are determined; or
 - (ii) 30%, in total, of what is collected of the monetary sanction imposed in the judicial or administrative action.
- (4) The commission may not award a reporter under this section if the reporter:
- (a) is convicted of a criminal violation related to the covered judicial or administrative action for which the reporter otherwise could receive an award;
 - (b) gains the original information through the performance of an audit of financial statements required under securities laws and for whom providing the original information would violate 15 U.S.C. Sec. 78j-1;
 - (c) fails to provide the original information to the commission or division in accordance with Section 61-1-103;
 - (d) knowingly or recklessly makes a false, fictitious, or fraudulent statement or misrepresentation;
 - (e) uses a false writing or document knowing that, or with reckless disregard as to whether, the writing or document contains false, fictitious, or fraudulent information;
 - (f) knows that, or has a reckless disregard as to whether, the disclosure is of original information that is false or frivolous;
 - (g) has a legal duty to report the original information to the commission or division; or
 - (h) qualifies for an award as described in Section 21F of the Securities Exchange Act, 15 U.S.C. Sec. 78u-6, and regulations issued under that section.

Amended by Chapter 366, 2012 General Session

Amended by Chapter 369, 2012 General Session

61-1-107. Procedures related to an award to a reporter.

(1) If the commission determines to make an award under Section 61-1-106, the commission shall make the award in accordance with a procedure adopted by the division by rule.

(2) A contract with the commission is not necessary for a reporter to receive an award under Section 61-1-106, unless otherwise required by the division by rule made under Subsection (1).

(3) A reporter who makes a claim for an award under this section may hire an attorney to represent the reporter.

(4) (a) The commission has discretion when making a determination under this section or Section 61-1-106, including whether, to whom, or in what amount to make an award.

(b) In accordance with Title 63G, Chapter 4, Administrative Procedures Act, a person aggrieved by a determination of the commission, except for a determination of the amount of the award, may appeal the determination in the same manner as a formal adjudicative proceeding.

(5) This part may not be construed to require the division or commission to compensate a reporter for participation in an investigation, hearing, or inquiry held under this chapter.

(6) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking

Act, the division shall make the rules described in Subsection (1) and Subsection 61-1-106(3) consistent with this part.

Enacted by Chapter 318, 2011 General Session

61-1-108. Notice of contents of this part -- May not waive -- Nonexclusive.

(1) An employer who is licensed under this chapter shall post a notice and use other appropriate means to inform an employee of rights, protections, and obligations under this part.

(2) An individual may not waive a right or protection provided by this part by agreement, policy form, or condition of employment, including by a predispute arbitration agreement.

(3) This part may not be considered to diminish the rights, privileges, or remedies of a reporter under federal or state law, or under any collective bargaining agreement.

Enacted by Chapter 318, 2011 General Session